

Exhibit B

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE
3 KNOXVILLE DIVISION
4 No. 3:16-cv-00121

5 -----x
6 LEWIS COSBY and KENNETH R. MARTIN as
7 beneficiary of the Kenneth Ray Martin Roth
8 IRA, on behalf of themselves and all
9 others similarly situated,

10 Plaintiffs,

11 - against -

12 KPMG, LLP and SCOTT M. BORUFF,

13 Defendants.

14 -----x

15

June 4, 2019

16

8:06 a.m.

17

18

19 VIDEOTAPED DEPOSITION of DR. MUKARRAM
20 ATTARI, held at the offices of COHEN
21 MILSTEIN SELLERS & TOLL, PLLC, located at
22 88 Pine Street, 14th Floor, New York, New
23 York 10005, before Anthony Giarro, a
24 Registered Professional Reporter, a
25 Certified Realtime Reporter and a Notary
 Public of the State of New York.

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1 A P P E A R A N C E S :

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3 COHEN MILSTEIN SELLERS & TOLL, PLLC
4 Attorneys for Plaintiffs
5 88 Pine Street, 14th Floor
6 New York, New York 10005

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10 BY: LAURA POSNER, ESQ.
11 RICHARD BURNER, Paralegal

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15 McDERMOTT WILL & EMERY
16 Attorneys for Defendant KPMG, LLP
17 340 Madison Avenue
18 New York, New York 10173

19
20
21 BY: GREGORY G. BALLARD, ESQ.

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23
24
25 WALLER LANSDEN DORTCH & DAVIS, LLP
26 Attorneys for Defendant KPMG, LLP
27 511 Union Street, Suite 2700
28 Nashville, Tennessee 37219

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30
31 BY: PAUL DAVIDSON, ESQ.

32
33
34 ALSO PRESENT:

35 Jonathan Popham, Videographer

1 THE VIDEOGRAPHER: Good
2 morning. We are going on the record
3 at 8:06 a.m. on June 4th, 2019.
4 Please note that the microphones are
5 sensitive and may pick up whispering,
6 private conversations and cellular
7 interference. Please turn off all
8 cell phones or place them away from
9 the microphones as they can interfere
10 with the deposition audio. Audio and
11 video recording will continue until
12 all parties agree to go off the
13 record.

14 This is Media No. 1 in the
15 video deposition of Mukarram Attari,
16 taken by counsel for plaintiffs, in
17 the matter of Lewis Cosby and Kenneth
18 R. Martin versus KPMG, LLC and Scott
19 B. Boruff, filed in the United States
20 District Court for the Eastern
21 District of Tennessee, Knoxville
22 Division, Case No. 3:16-cv-00121.
23 This deposition is being held at
24 Cohen Milstein, located at 88 Pine
25 Street, New York, New York.

1 My name is Jonathan Popham
2 from Veritext. And I'm the
3 videographer. The court reporter is
4 Anthony Giarro, also from Veritext.

5 I'm not authorized to
6 administer an oath. I'm not related
7 to any party in this action, nor am I
8 financially interested in the
9 outcome.

10 Will counsel and all present
11 please now state their appearances
12 and affiliations for the record.

13 MS. POSNER: Good morning.
14 Laura Posner from Cohen Milstein
15 Sellers & Toll. And together with me
16 is Rich Burner, who's a paralegal in
17 my office.

18 MR. BALLARD: I'm Greg
19 Ballard from McDermott Will & Emery
20 for KPMG, LLP.

21 MR. DAVIDSON: Paul Davidson
22 from Waller Lansden Dortch & Davis
23 for KPMG.

24 THE VIDEOGRAPHER: Will the
25 court reporter please swear in the

1 witness.

2 D R. M U K A R R A M A T T A R I,
3 after having first been duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MS. POSNER:

8 Q Good morning, Dr. Attari.

9 How are you?

10 A Good.

11 MS. POSNER: Just a bit of
12 housekeeping, the caption read by the
13 videographer included Defendant
14 Boruff who was dismissed from the
15 action. So I just want to make sure
16 that that's clear on the record.

17 Q Thank you for being here
18 today. I appreciate it.

19 You've been deposed before;
20 right?

21 A Yes.

22 Q So you understand how this
23 works. I'm going to ask you questions,
24 you have to wait for me to finish my
25 question, and then you'll have to respond

1 orally, so that the court reporter can
2 get down your answers.

3 A Yes.

4 Q If you have any questions
5 about the questions I'm asking, you don't
6 understand what I'm asking, you'll be
7 sure to let me know?

8 A I will.

9 Q And if you don't ask me any
10 questions, I'm going to assume you
11 understand my question; is that okay?

12 A That's fine.

13 Q And if you ever need to take
14 any breaks, please let me know. I just
15 ask that you respond to the pending
16 question before we take that break. Is
17 that okay?

18 A Yeah. That sounds fine.

19 Q We're going to mark as
20 Exhibit 58, your report in this matter.

21 (The above-referred-to
22 document was marked as Exhibit 58 for
23 identification, as of this date.)

24 Q Do you recognize this
25 document?

1 A I do.

2 Q And did you sign this report
3 on May 13th, 2019?

4 A Yes, I did.

5 Q And did you prepare this
6 report?

7 A I prepared it with
8 assistance from my team.

9 Q And how many members are on
10 your team?

11 A There were two or three
12 people who primarily worked on it. But
13 there were a larger number over the
14 course of the report.

15 Q Can you tell me the names of
16 the individuals from your team that
17 worked on the report?

18 A The primary people were
19 Assen Koev and Ana Balcarcel.

20 Q And did Mr. Koev or
21 Ms. Balcarcel ever submit an expert
22 report in public that you're aware of?

23 A No. I'm not aware of any
24 that they have submitted.

25 Q Let's turn to page 2 of your

1 report and specifically paragraph 6.

2 Is this a complete list of
3 the questions that you were asked by
4 counsel for KPMG to address in your
5 report?

6 A Yes.

7 Q There are no questions
8 outside of what's provided in
9 paragraph 6; correct?

10 A Correct. I mean I was asked
11 the overarching question and to review
12 and opine on the reports submitted by
13 Chad Coffman. And then I was asked
14 specific questions.

15 Q And then if you continue
16 down on that page, starting on
17 paragraph 8 and continuing through 16 on
18 page 5, is that a complete summary of
19 your opinions as you hold them today in
20 this matter?

21 A It's a summary of my
22 opinions. The detailed opinions are in
23 the remainder of the report. So, yes,
24 this is a summary of the opinions.

25 Q And does this report in full

1 contain a complete and accurate statement
2 of your opinions as you hold them today
3 in this matter?

4 A Yes, it does.

5 Q And does it contain the
6 bases and reasons for those opinions?

7 A Yes, it does.

8 Q And did you include in this
9 report the facts and data you considered
10 in formulating these opinions?

11 A Yes. In addition, there was
12 some backup material that was provided to
13 you.

14 Q And does this report contain
15 all the exhibits that you'll use to
16 support your opinion in this matter?

17 A Yes, it does, again with the
18 backup. So I'm assuming you're using the
19 term report to encompass this and the
20 backups, correct.

21 Q And did you do your best to
22 comply with the federal rules requirement
23 that this report contain a complete
24 statement of all opinions you will
25 express and the bases or reasons for

1 them?

2 A Yes, I did.

3 Q Is there a reason you did
4 not declare under penalty of perjury
5 under the laws of the United States that
6 your report is true and correct when you
7 signed it?

8 A Sorry. I don't understand
9 that question.

10 Q Do you know what it means to
11 declare something under penalty of
12 perjury?

13 A I have seen that, yes. But
14 I don't know that I've seen that very
15 often in expert reports.

16 Q So you didn't understand
17 whether you had a requirement to do that?

18 A Yes. I didn't.

19 Q Do you have any reason to
20 believe that anything contained in your
21 report is inaccurate?

22 A No, I don't.

23 Q What did you do before you
24 signed your report to ensure that the
25 report and the exhibits thereto were true

1 and correct?

2 A I worked on the report. I
3 reviewed it at various stages as, you
4 know -- I was making at it, other people
5 were making at it and, you know, I kind
6 of made sure I understood the analysis
7 that was being done. And it was being
8 done under my supervision and to the --
9 to the specifications that I was
10 providing.

11 Q Did you review all of the
12 documents cited as support for your
13 opinions in your report?

14 A Yes. I mean some of the
15 academic literature, I may not have
16 cited -- I may not have read completely.
17 Some of the other documents, I may not
18 have read completely.

19 Q Have you or anyone on your
20 behalf been asked to calculate damages in
21 this matter?

22 A At some point, we were asked
23 to do a preliminary damage calculation.

24 Q Do you recall what the
25 damage calculation was?

1 MR. BALLARD: We're going to
2 ask you not to answer that question.
3 That would be protected.

4 Q You're not providing an
5 opinion here today with regard to the
6 damages at issue in this case; correct?

7 A No.

8 Q If you turn to, I believe
9 it's Appendix 1 of your report, which is
10 right after your signature, does Appendix
11 1 contain all of your relevant
12 qualifications in this matter?

13 A Appendix 1 is my CV. So it
14 contains, yes, all of my relevant -- all
15 of the relevant information about me.

16 Q And there's a list of
17 publications provided on the bottom of
18 page 1, running over to page 2.

19 Is that a complete list of
20 all the publications you've published --
21 actually, this is longer than the past
22 ten years but in the past ten years?

23 A Yes.

24 Q And then --

25 A Some of these are not

1 publications. They're working papers.
2 But they're probably out there somewhere.
3 So the first four -- five are
4 publications. They're SR working papers.

5 Q Are they papers you're
6 currently working on or are there old
7 working papers?

8 A No. They're old working
9 papers.

10 Q Were they published
11 anywhere?

12 A They're available publicly.
13 But they weren't published in a journal.

14 Q Now, if you turn to page 3
15 of this document, it talks about your
16 expert assignments. Do you see that?

17 A Yes.

18 Q Is that a complete list of
19 all of the matters in which you've
20 submitted expert reports?

21 A Yes.

22 Q The first matter, the Ambac
23 v. EMC Mortgage Corporation matter, is
24 that related to the Syncora-EMC
25 Corporation matter?

1 A I don't know what you mean
2 by related.

3 Q Are the cases related?

4 A Not that I know of.

5 Q Do they involve the same set
6 of facts?

7 A They involve similar facts
8 but not the same.

9 Q And of these five matters,
10 only one of them is a securities fraud
11 class action; correct?

12 A Correct.

13 Q And that's the Dalton Petrie
14 case?

15 A That's correct.

16 Q That's actually two related
17 matters; is that correct?

18 A Yeah. They're two case
19 numbers. I don't know how they were
20 related and such.

21 Q And in that matter, I'm
22 going to refer to that as ECG; is that
23 okay?

24 A That's fine.

25 Q Sorry. EGC.

1 In the EGC matter, who were
2 you hired by?

3 A One of the defendants. I
4 don't know which one.

5 Q Was it the --

6 A One or more of the
7 defendants. I don't know.

8 Q Were one or more of those
9 defendants a number of accountants?

10 A No. There were -- I believe
11 they were officers and directors. But I
12 don't recall sitting here.

13 Q Now, in that case, EGC
14 traded on the OTC bulletin board;
15 correct?

16 A Correct.

17 Q And you opined that the
18 market for EGC was not efficient;
19 correct?

20 A Correct.

21 Q And the court disagreed with
22 you; correct?

23 A Correct.

24 Q Are you, outside of these
25 five matters, currently working on any

1 securities fraud class actions?

2 A As an expert?

3 Q Yes.

4 A No.

5 Q And then if you could turn
6 back to page 1 of your report, in
7 paragraph 4, you talk about your clients
8 and various matters. And you list
9 institutional and individual investors.

10 Do you see that?

11 A Yes.

12 Q In what context have you
13 represented institutional or individual
14 investors?

15 A As a consultant in -- as a
16 consultant in various kinds of
17 damage-related matters.

18 Q In any of those matters, did
19 you submit a report to a court?

20 A No.

21 Q And were any of those
22 matters securities fraud class actions?

23 A No.

24 Q If you turn to page 5 of
25 your report, paragraph 17, you indicate

1 that you're being compensated at an
2 hourly rate of \$990 for your work in this
3 matter. Is that still correct?

4 A CRA is being compensated at
5 that rate.

6 Q Fair enough.

7 Is that your current
8 standard rate?

9 A Yes.

10 Q And we mentioned that -- you
11 mentioned that you had at least two
12 members of your team working on this
13 matter.

14 Are they also charging
15 \$990 per hour?

16 A I don't think they are
17 charging anything. CRA is charging their
18 standard rate. And I don't know their
19 rate, sitting here. It's not 990.

20 Q Do you know, ballpark, what
21 it might be?

22 A It would be between 5 and
23 800 or so.

24 Q Do you know how many hours
25 your team has spent on this matter?

1 A No.

2 Q Do you know if it's more
3 than 100?

4 A I've spent more than 100.

5 So, yes, the team would have spent more
6 than 100.

7 Q Have you spent more than 200
8 hours?

9 A No. It's between 100 and
10 200.

11 Q Is it fair to say that your
12 team, including you, has spent over 500
13 hours on this matter?

14 A Very likely.

15 Q Is it fair that you've spent
16 over 750 hours as a team on this matter?

17 A Very -- I mean less likely
18 than 500 but quite likely.

19 Q So it's likely between 500
20 and 750 hours?

21 A It's probably more than --
22 if I had to estimate it, sitting here, it
23 would probably be something around 1,000.
24 But, you know, it could be over, it could
25 be under.

1 Q Do you know how much CRA has
2 billed KPMG in this matter?

3 A No, I don't.

4 Q And do you bill your time --
5 I should say, does CRA bill your time or
6 your team's time by the hour?

7 A Yes.

8 Q CRA is a public company;
9 correct?

10 A Correct.

11 Q And it files Forms 10-K with
12 the SEC; correct?

13 A Correct.

14 Q And you read those form
15 10-Ks; correct?

16 A Yes. I have read some of
17 them.

18 Q Is anyone from KPMG a
19 shareholder in Charles River?

20 A I don't know how I would
21 know.

22 Q Do you know if anyone from
23 Sidley Austin is a shareholder in CRA?

24 A I don't know.

25 Q Do you know if anyone from

1 McDermott Will & Emery is a shareholder in
2 CRA?

3 A I don't know.

4 Q Do you know if anyone from
5 Waller Lansden Dortch & Davis is a
6 shareholder in CRA?

7 A I don't know.

8 Q Charles River uses an
9 outside auditor; correct?

10 A Correct.

11 Q Do you know who the current
12 outside auditor is?

13 A I do not.

14 Q And was KPMG ever Charles
15 River's outside auditor?

16 A I do not know.

17 (The above-referred-to
18 document was marked as Exhibit 59 for
19 identification, as of this date.)

20 Q We've handed you what's been
21 marked as Exhibit 59.

22 Do you recognize this
23 document?

24 A I haven't seen this before.

25 Q And this is a Form 10-K

1 filed with the SEC by CRA International;
2 correct?

3 A That's what it says.

4 Q And it was filed on
5 June 6th, 2014?

6 A Yes. That's what it says is
7 the date of the report.

8 Q If you can turn to page 2 of
9 this document, if you review that, does
10 that refresh your recollection that KPMG
11 previously served as CRA's auditor?

12 A Where are you reading?

13 Sorry.

14 Q I guess it's a carryover
15 page.

16 On the bottom of page 1, it
17 talks about, "On this date, we dismissed
18 KPMG, LLP as our registered public
19 accountants effective immediately."

20 And it goes on page 2,
21 discussing the most recent audit opinions
22 from KPMG.

23 A So, yeah, this document says
24 that KPMG had served as CRA's auditor at
25 some point.

1 Q Until June 6th of 2014;
2 correct?

3 A That's what it seems to say,
4 yes.

5 Q Do you know why KPMG was
6 dismissed as Charles River's auditor?

7 A I do not.

8 Q And if you turn to page 2 of
9 this document in the first-full
10 paragraph -- sorry. Excuse me.

11 The second-full paragraph,
12 it talks about KPMG's audit opinions. Do
13 you see that?

14 A Yes.

15 Q And for Charles River's
16 fiscal year ending December 28, 2013 and
17 fiscal year ending March 29th, 2014, what
18 did KPMG find with regard to Charles
19 River's internal controls?

20 MR. BALLARD: Objection to
21 form.

22 A It doesn't have 2014.

23 Q Sorry.

24 If you look up on the
25 first-full paragraph, it says, "Except

1 for the material weakness and our
2 internal control over financial reporting
3 as of our fiscal year ended December 28,
4 2013 and our fiscal quarter ended
5 March 29th, 2014." Do you see that?

6 A Yes.

7 Q I just want to make sure I
8 get the dates right.

9 If you then go down to the
10 following paragraph, it talks about
11 "Except that KPMG's report indicates that
12 we did not obtain effective control over
13 financial reporting as of December 28,
14 2013 because of the effect of the
15 aforementioned material weakness." You
16 see that?

17 A Yes.

18 Q So did KPMG find that
19 Charles River had inadequate internal
20 controls as of December 28, 2013?

21 A I mean that's how this
22 sentence can be read. But I have no
23 independent knowledge of that.

24 Q You can turn that down.

25 I'm going to turn to the

1 Cammer and Krogman factors. One of the
2 factors you don't address in your report,
3 if I understand correctly, in your
4 report, you don't dispute that the
5 average weekly trading volume for Miller
6 Energy's common stock exceeded the
7 standard under Cammer; correct?

8 A Correct.

9 Q And you also don't dispute
10 that the average weekly trading volume
11 for Miller Energy's Series C and Series D
12 also exceeded the standard under Cammer;
13 is that correct?

14 A Correct.

15 Q Turn to page 57 of your
16 report. I'm going to direct your
17 attention to paragraphs 169 through 173
18 on page 59.

19 A The okay.

20 Q In your report, you don't
21 dispute that the analyst coverage of
22 Miller Energy's common stock meets the
23 standard under Cammer; correct?

24 MR. BALLARD: Objection to
25 form.

1 A I don't know if there is a
2 specific number of analysts that Cammer
3 specifies, sitting here. But Mr. Coffman
4 lists a number of different analysts.
5 And I don't dispute that there were a
6 number of analysts covering Cammer's
7 common stock.

8 Q You also don't dispute that
9 it meets the Cammer's standard; correct?

10 MR. BALLARD: Objection.

11 A Like I said, I don't know
12 that Cammer has a bright line that says,
13 you know, if you're over ten, you're
14 good. And if you're under ten, you're
15 not, at least I don't recall there being
16 something like that.

17 Q I understand that there's no
18 specific number.

19 My question is whether you
20 are disputing whether there was
21 sufficient analyst coverage of the common
22 stock, such that it meets the standard
23 under Cammer.

24 A And what I'm trying to say
25 is that I don't know that there is a

1 particular level. So, you know,
2 Mr. Coffman has said there were --
3 whatever -- 10 or 15 analysts covering
4 it. A number of those were actual
5 analysts. The others were automated
6 reports. And I'm not disputing it in
7 this report, yes.

8 Q What is Cammer Factor 2?

9 A I don't know the sequence.

10 Q The Cammer factor dealing
11 with analyst reports, what, in your
12 opinion, is the purpose of that Cammer
13 factor?

14 A That there were people who
15 were doing analysis of the firm's
16 financials, you know, valuing the
17 securities, providing investors with
18 recommendations on whether to buy or sell
19 the securities or to hold them, what they
20 thought the value of the securities would
21 be in the future, you know, and to
22 provide other information that investors
23 might be able to use, such as
24 projections, to form their own opinions
25 about investment in the securities. So

1 analysts as in to analyze.

2 Q So does analyst coverage
3 indicate that there's interest in the
4 company and its securities?

5 A If there was no interest in
6 the company and its securities, it's
7 unlikely that analysts would be writing
8 reports.

9 On the other hand, it's more
10 than just interest. It's providing
11 investors an ability to evaluate an
12 investment in the securities.

13 Q Does analyst coverage
14 indicate that information about a company
15 is widely distributed?

16 A Analyst coverage indicates
17 that analysis of, you know,
18 valuation-related information about the
19 company's securities is available to
20 investors. Most of these analyst reports
21 are not public documents. You can Google
22 and find analyst reports, typically.

23 Q Depends on the analyst;
24 correct?

25 A Yes.

1 Q Do press reports also
2 indicate that there is interest in a
3 company and its securities?

4 A Press reports indicate that
5 there was some event that the providers
6 of news found interesting enough to
7 report on.

8 Q And generally, press reports
9 are pretty widely distributed; correct?

10 A Again, I mean it depends on
11 the publication. Some are
12 subscription-only; some are freely
13 available.

14 Q Do SEC filings also provide
15 information about a company and its
16 securities?

17 A The SEC filings also provide
18 information about a company and its
19 securities.

20 Q And generally speaking, SEC
21 filings are available publicly through
22 the Edgar Web site?

23 A Generally available, yes.

24 Q Are earnings call
25 transcripts also a means for investors to

1 find out information about a company and
2 its securities?

3 A Yes, they are.

4 Q And generally, are earning
5 call transcripts widely distributed and
6 available?

7 A Yes. I believe so.

8 Q Was the value of Miller
9 Energy's Series C and Series D preferred
10 stock related to the value of Miller
11 Energy's common stock?

12 A Not directly, no.

13 Q In no way, were they
14 related?

15 A They were related but not --
16 you know, it wasn't that if the common
17 was X, then the preferred would be 2X or
18 half X. It wasn't a direct and stable
19 relationship over time.

20 Q But they were related?

21 A Yes. If the common went up,
22 you would expect the preferred to go up.

23 Q How were they related?

24 A I'm not sure I understand
25 that question.

1 Q Were there specific
2 attributes of the preferred securities
3 that were related to the common stock?

4 A Not directly. There were --
5 there were securities issued by Miller.
6 But there was a sequencing in which
7 payments would be made. The preferred
8 had a right to an ongoing dividend while
9 the common stockholders would only be
10 paid a dividend, you know, if there was
11 money available.

12 Q And you agree with me that
13 the preferred stock was higher in the
14 capital structure than the Miller's
15 common stock?

16 A It was more senior in the
17 capital structure than Miller's common
18 stock, yes.

19 Q And would you agree with me
20 that the value of the preferred stock was
21 economically related to the value of the
22 common stock?

23 A Yes and no. If the common
24 stock went down to zero, it was likely
25 that the preferred would also have a low

1 or no value.

2 On the other hand, if the
3 common went up to a very high number, it
4 was not clear that the preferred would
5 kind of track it and go up to as a higher
6 number; you know, the Series C did have a
7 conversion feature that might cause it to
8 track a little bit better. But the
9 Series D had no conversion feature.

10 Q If you turn to page 59 of
11 your report, paragraph 173, the bottom of
12 that paragraph, you say, "Equity analyst
13 reports analyze revenue, projections,
14 earning projections, profitability and
15 share price targets. These are relevant
16 to the equity component of the preferred
17 security but insufficient for the
18 analysis of the debt component." You see
19 that?

20 A Yes.

21 Q So you agree that the
22 analyst reports, revenue projections,
23 earning projections, profitability and
24 share price targets were relevant to
25 preferred security holders?

1 A The share price targets have
2 to do with the common. So they would not
3 be relevant to the preferred stockholders
4 directly. The rest of it would have some
5 relevance, yes.

6 Q When you say "the share
7 price targets wouldn't be directly
8 relevant," would they be indirectly
9 relevant?

10 A Yes. If analysts explained
11 that they believed that the common stock
12 would be worth a lot more or they
13 expected that the common stock would be
14 worth a lot more in the future, that
15 would be a positive sign, signal to
16 preferred shareholders.

17 Q And Miller Energy's equity
18 analysts did analyze Miller's revenue
19 projections, earnings projections,
20 profitability and gave share price
21 targets occasionally; correct?

22 A Some of them did. I think a
23 fraction of the total list that
24 Mr. Coffman has.

25 Q Did Miller's -- did the

1 analysts following Miller Energy also
2 discuss Miller Energy's debt?

3 A In valuing the common stock,
4 they discussed that, yes.

5 Q Did the analysts covering
6 Miller Energy also discuss Miller
7 Energy's liquidity?

8 A Again, in valuing the common
9 stock, yes.

10 Q And did the analysts
11 following Miller Energy securities
12 specifically discuss the preferred
13 securities?

14 A They discussed, I believe,
15 the issuance of the preferred securities,
16 you know, payments that were due on the
17 preferred securities. They did not
18 discuss the preferred in terms of valuing
19 the preferred specifically.

20 Q Did the analysts covering
21 Miller Energy also discuss the payment of
22 dividends to the preferred shareholders?

23 A Yes. The fact that
24 dividends had to be paid. And so that
25 would affect what was left over for the

1 common stockholders.

2 Q Did they also discuss
3 whether the dividends would be paid to
4 the preferred shareholders?

5 A I believe they may have
6 discussed it, the fact that the dividends
7 had to be paid, yes.

8 Q For this Cammer factor to be
9 satisfied, is it your position that only
10 formal analysts reports with a price
11 target for the security at issue were
12 relevant?

13 A Absent that, investors do
14 not get information about the securities.
15 They get information about the company,
16 so yes.

17 Q What's your basis for that
18 opinion?

19 A The factor relates to
20 analyst report. It doesn't relate to SEC
21 filings or news articles and so on.

22 Q Do you have any academic
23 literature case law to support your
24 contention that analyst reports with
25 price targets are the only type of

1 analyst reports that are relevant for
2 purposes of this Cammer factor?

3 **A** **NO.**

8 Q So, Dr. Attari, I've marked
9 Exhibits 60 through 70 which are certain
10 analyst reports on Miller Energy.

11 Did you have a chance to
12 look through them briefly?

A Just the headers, yes.

14 Q Did you read the analyst
15 reports pertaining to Miller Energy?

16 A I read a fair number of
17 them.

Q If you turn to Exhibit 60 on
the first page, this is October 10, 2012
analyst report by SunTrust Robinson
Humphrey, there's a full paragraph that
starts, "Well on the way to sizable
production ramp." Do you see that?

24 A Yes .

1 eliminating much of the current
2 18 percent debt and 10.75 percent
3 preferred shares. Do you see that?

4 A Yes.

5 Q Do you think that
6 information is relevant to preferred
7 shareholders?

8 A In what way are you asking
9 it's relevant?

10 Q In any way.

11 A I mean it's financial
12 information about Miller, yes. So to the
13 extent it's financial about Miller is
14 relevant, yes.

15 Q It's discussing Miller
16 Energy's debt; correct?

17 A It's discussing production
18 as I see it.

19 Q Doesn't talk about trying to
20 eliminate much of the current 18 percent
21 debt?

22 A Yes.

23 Q And 10.75 percent preferred
24 shares?

25 A Yes.

1 Q Turn to the next exhibit,
2 61. This is a report by Brean Capital
3 LLC on February 8, 2013. And if you look
4 at the second-to-last sentence, it talks
5 about the requirement to raise an
6 additional 15 million in preferred equity
7 to tap the additional funds.

8 A Yes.

9 Q And then it talks about the
10 impact of that for the common
11 shareholders?

12 A Yes. It talks about the
13 impact for the common shareholders and
14 the reduced earnings per share.

15 Q Is this information
16 something that you think would be
17 relevant to shareholders?

18 A I'm not sure. The sentence
19 says that it will reduce earnings per
20 share for the common shareholders.

21 Q Correct. That second
22 sentence does.

23 But do you think the fact
24 that they're required to raise additional
25 15 million in preferred equity to tap

1 additional funding is important to
2 preferred shareholders?

3 A Yeah. It's a piece of
4 information for preferred shareholders.

5 Q You can turn that over.

6 And you can look at
7 Exhibit 62. This is a July 17th, 2013
8 report by SunTrust Robinson Humphrey.

9 And if you go towards the bottom of the
10 first page under "Strong well could quell
11 liquidity concerns," you see that
12 paragraph?

13 A Yes.

14 Q Do you think that's
15 information that would be relevant to
16 preferred shareholders?

17 A It's information about the
18 company, yes.

19 Q It's also talking about
20 liquidity concerns with regard to the
21 company; correct?

22 A Yes.

23 Q And if you turn towards
24 page 3 of this document, the very last
25 line here, which is price target

1 analysis, they talk about cash flow
2 valuation; correct?

3 A Correct.

4 Q And that information would
5 be relevant to preferred shareholders; is
6 that correct?

7 A I believe that's the
8 valuation of the common stock. 450 is
9 the price target that they come up with
10 for the common stock.

11 Q Right.

12 And do you think cash flow
13 valuation would be relevant to a
14 preferred shareholder of the security?

15 A This is after the preferreds
16 have been paid. So this is what's left
17 over for the common. So I'm not sure
18 that particular number would be terrible
19 relevant to the preferred shareholders.

20 Q You don't think cash flow
21 would be potentially relevant to
22 preferred shareholders?

23 A Preferred shareholders would
24 care about cash flow. But they would
25 care about cash flow further up the

1 chain.

2 Q Because they're concerned
3 about whether they'd be able to get their
4 dividend; correct?

5 A Yes.

6 Q You can turn that over.

7 Turn to Exhibit 63 which is
8 a September 27th, 2013 report by Imperial
9 Capital.

10 Just on that first chart on
11 the first page, talking about key data,
12 do you see that chart?

13 A Yes.

14 Q They list the total
15 preferred outstanding; correct?

16 A Yes.

17 Q 63.2 million?

18 A Yes. And that's information
19 that will be in the 10-K or the 10-Q.

20 Q If you turn to the next
21 page, they then have a chart about Miller
22 Energy's capitalization. Do you see
23 that?

24 A Yes.

25 Q And they also talk about the

1 preferred equity there as well as the
2 total debt and preferred?

3 A Yes.

4 Q And then if you turn to
5 page 5 of this report, it's the first two
6 paragraphs under balance sheet.

7 A Yes.

8 Q In that first paragraph,
9 they're talking about Miller's
10 long-term -- among other things, Miller's
11 long-term debt; correct?

12 A Correct.

13 Q And they also talk about the
14 preferred Series C and the preferred
15 Series D; correct?

16 A Correct.

17 Q And then in the following
18 paragraph, they talk about specific
19 attributes of the preferred Series C and
20 the preferred Series D?

21 A Yes.

22 Q Do you think this
23 information would be relevant to
24 preferred shareholders?

25 A Yes. But this is all

1 duplicative of information that's in
2 Miller's filings. So there's no analysis
3 of valuation or related information.

4 Q If you turn to the following
5 page, page 6, under liquidity and capex,
6 in that second paragraph --

7 A Yes.

8 Q -- do you see they're
9 talking about a preferred equity raise
10 and the impact of that raise with the
11 Apollo withdrawal?

12 A Yes.

13 Q And they talk about the
14 ability of that money to bridge the gap
15 between capex and cash flow?

16 A Yes.

17 Q Do you think that's
18 information that would be relevant to
19 preferred shareholders?

20 A Yes.

21 Q If you turn to page 14 of
22 that same report, there's an income
23 statement chart. Do you see that?

24 A Yes.

25 Q And they list there under

1 net income, the preferred stock dividends
2 and accretion.

3 A Yes.

4 Q And if you turn to page 16
5 under stockholders' equity, they also
6 discuss the numbers for the preferred
7 stock as well; correct?

8 A Correct.

9 Q You can turn that over and
10 turn to Exhibit 64.

11 This is a report by Brean
12 Capital on August 20th, 2014. Do you see
13 that?

14 A Yes.

15 Q And in that first paragraph,
16 the last sentence, it talks about the
17 fact that Miller has informed the market
18 that it's going to do another public
19 offering of the Series D. You see that?

20 A Sorry. Where are you?

21 Q First paragraph under
22 investment summary.

23 A Oh, yes.

24 Q And it's the last
25 sentence -- sorry -- the second-to-last

1 sentence.

2 A Yes.

3 Q And then if you go down
4 under key points, the second bullet
5 point, they give more information there
6 about the announced public offering;
7 correct?

8 A Correct.

9 Q Go to the next one,
10 Exhibit 65.

11 This is Brean Capital report
12 of August 21st, 2014. And throughout
13 this whole first page, they talk about
14 the Series D preferred offering; correct?

15 A Can you point me to the
16 place?

17 Q That first full paragraph,
18 they start talking about the confirmed,
19 they price an offering at 750,000 shares
20 of Series D preferred stock for a price
21 of 2450 per share, successfully raising
22 18.4 million in gross proceeds.

23 A But that's something that
24 Miller did. So this is just a report
25 that Miller issued these securities.

1 Q And then it talks about the
2 proceeds from this offering, together
3 with drilling rebates and some money from
4 the company's revolver, that it gives
5 them 70 million in year-term liquidity.

6 A Yeah. But this doesn't
7 really have to do with the preferreds.
8 Where the cash came from is not terribly
9 relevant to the investments that they're
10 going to be able to fund.

11 Q You don't believe that the
12 company's liquidity would be relevant to
13 preferred shareholders?

14 A It would. But this year,
15 they're talking about liquidity for
16 investment purposes.

17 Q You don't believe that would
18 be relevant to preferred shareholders?

19 A No, not directly in terms
20 of -- it's only relevant to the extent
21 that they need to know that the dividends
22 will be paid. At least the way you read
23 it, they're talking about investments
24 that they'll be able to fund.

25 Q Drilling that they'll be

1 able to embark on; correct?

2 A Yes. Investments.

3 Q And in order to meet revenue
4 projections and have liquidity to provide
5 dividends, they actually have to be
6 successful in their drilling efforts;
7 correct?

8 A Yes. But this is money
9 that's already being raised. So the
10 first bit you read was about money that
11 had been raised from preferred
12 shareholders.

13 So it was like a piece of
14 information about the past. And now the
15 money's in the firm. And this is telling
16 you what they're planning to do with the
17 money. That's relevant to the firm as a
18 whole, not -- not -- it's not information
19 specific to preferred shareholders or --
20 I mean none of this gives you a way to
21 value the C and D. It's general
22 information about the firm which is
23 relevant.

24 MS. POSNER: Off the record.

25 THE VIDEOGRAPHER: We're

1 going off the record at 9:01. This
2 marks the end of Media 1.

3 (A short recess was taken.)

4 THE VIDEOGRAPHER: We're
5 back on the record at 9:10. This
6 marks the beginning of Media 2.

7 Q Apologies for the mixup with
8 the exhibit numbers.

9 I'm going to turn your
10 attention to Exhibit 66 which would be
11 the September 8th, 2014 MLV report. Do
12 you see that?

13 A Yes.

14 Q And then in the paragraph on
15 the first page under Liquidity Enhanced
16 by Preferred Stock Issuance and Tax
17 Credits --

18 A Yes.

19 Q -- if you review that
20 paragraph, do you think that's
21 information that would be relevant to
22 preferred shareholders?

23 A Yes. Again, it's
24 information about securities that were
25 issued and moneys that were raised from

1 those securities and how they're going to
2 be used.

3 Q And also tax credits;
4 correct?

5 A Yes.

6 Q And then if you turn to
7 page 3, they provide a summary financial
8 model. Do you see that?

9 A Yes.

10 Q And do you see under the
11 income statement, they list the preferred
12 dividends there?

13 A Yes. But this is just the
14 promised amounts, are they not?

15 Q I'm not going to answer your
16 question.

17 A I'm asking you --

18 Q I understand you're asking
19 me. I'm not going to answer your
20 questions.

21 A This is just a pro forma
22 promise amount. So it doesn't really say
23 anything to the preferred shareholders
24 about whether or not they'll get paid.
25 This is only relevant to the equity

1 holders in terms of here's money that's
2 promised to the preferred shareholders.

3 Q Correct.

4 And under the balance sheet,
5 it also lists the preferred stock;
6 correct?

7 A Yes. It's the balances of
8 the preferred stock outstanding.

9 Q You can turn to Exhibit 67
10 which is a December 10th, 2014 MLV
11 analyst report.

12 If you go to the bottom of
13 this first page, they discuss the payment
14 of the preferred dividends. Do you see
15 that? It says, "We also expect to -- we
16 expect it to honor its preferred
17 dividends which it considers
18 'sacrosanct.'" Do you see that? It's
19 the very last sentence.

20 A Yes.

21 Q You think that's information
22 that the preferred shareholders would be
23 interested in?

24 A Yes.

25 Q And then on the next page,

1 the earnings variance analysis under the
2 income statement, it provides information
3 about the preferred dividends, including
4 estimated for 2015?

5 A Yes.

6 Q And then under cash flow, it
7 does the same; correct?

8 A It says actual 2015 on here.
9 And I'm just trying to figure out --

10 Q The second -- the column
11 says "2015 estimated."

12 A Yeah. But it also has an
13 actual 2015. And I'm just trying to
14 figure out how you have actuals between
15 2015 since you're in the middle of the
16 year. Sorry. Anyway, you were asking?

17 Q They provide -- at least
18 they purport to provide the 2015 actual
19 and the 2015 estimated; correct?

20 A Yes.

21 Q And then if you turn the
22 page, page 3, again, they provide
23 information under income statement about
24 the preferred dividends?

25 A Yes. And this is the

1 promised dividend.

2 Q And then if you go under
3 cash flow statement, it also talks about
4 the dividends paid, although appears to
5 be zero thus far on this sheet.

6 A I think that is the common
7 dividend.

8 Q You might be right.

9 Under balance sheet, it
10 talks about the preferred stock. Same
11 page.

12 A Yes. And I thought we saw
13 this information on -- maybe it was a
14 previous report.

15 Q You can turn that to the
16 side.

17 Turn to Exhibit 68. This is
18 a Brean Capital report, dated
19 December 10th, 2014.

20 In the first-full paragraph
21 under Discussion --

22 A Yes.

23 Q -- it talks about noting
24 that preferred dividend payments were
25 sacrosanct in quotes several times.

1 "Giesler noted that the company's focus
2 on efficient low-risk operations now is
3 of paramount importance and that more
4 than a few means of financing debt
5 service and ongoing operations were on
6 the negotiating table, including asset
7 sales, joint venture, additional debt
8 and/or equity." Do you see that?

9 A Yes.

10 Q Do you think that
11 information would be relevant to
12 preferred shareholders?

13 A Yes. But this is just an
14 analysis reporting something that the
15 company set, the CEO set. It's not
16 analysis or an opinion.

17 Q So is it your opinion that
18 only opinions provided by analysts are
19 relevant to Cammer Factor 2?

20 A Well, it's the analysts
21 reports add value, add information
22 because analysts analyze information
23 about the firm. They put it together.
24 They opine on what that means for the
25 firm. And none of this has anything to

1 do with opinions about the valuation of
2 the preferred.

3 Q If you could answer my
4 question, it's your opinion that only
5 analyst opinions are relevant to Cammer
6 Factor 2?

7 A I think analyst opinions are
8 important to Cammer Factor 2.

9 MS. POSNER: Read back the
10 question.

11 (The requested portion was
12 read back by the court reporter.)

13 A No. But analyst opinions
14 are an important part of what's important
15 to Cammer Factor 2.

16 Q Do you have any academic
17 literature or case law that supports that
18 position?

19 A Not sitting here.

20 Q Sitting in your office,
21 perhaps?

22 A I mean I could search.

23 Q You don't cite any in your
24 report; correct?

25 A No.

1 Q You can turn that exhibit
2 down and turn to Exhibit 69.

3 This is a May 1st, 2015
4 report by MLV. And if you look at the
5 last-full paragraph on the first page
6 under "Preferred Dividends are the
7 Elephant in the Room."

8 A Yes.

9 Q Do you think that
10 information in that paragraph would be
11 relevant to preferred shareholders?

12 A Again, they're reporting on
13 a decision that the firm made.

14 Q Do you think that
15 information would be relevant to
16 preferred shareholders?

17 A Yes, that they would have
18 received it in press reports or, you
19 know, the firm's SEC filings and so on
20 which are public. I don't know if this
21 was public.

22 Q If you turn to the next
23 page, page 3, again, in their summary
24 financial model, they model out the
25 preferred dividends. Do you see that

1 under income statement?

2 A Yes.

3 Q And then under balance
4 sheet, again, it lists the preferred
5 stock.

6 A Yes.

7 Q You can turn that over.

8 Exhibit 70, this is a report
9 by Nobel Financial on July 30th, 2015.
10 If you turn to the second page of this
11 report on the third bullet point that
12 starts, "Mill continues to face liquidity
13 concerns and has preferred dividends,"
14 you see that paragraph?

15 A Yes.

16 Q Do you think that
17 information would be relevant to
18 preferred shareholders?

19 A I mean it would be stale
20 information by this point. They have
21 deferred several months before July 30th,
22 2015. So I mean this would be
23 information that was already out there.

24 Q Would the information be
25 important to preferred shareholders?

1 A Not in this report. By the
2 time this report came out, this
3 information would be stale.

4 Q That wasn't my question.

5 Would the information itself
6 be important to preferred shareholders?

7 A The information would have
8 been important to preferred shareholders
9 when Miller announced that it was
10 deferring dividend payments.

11 (The above-referred-to
12 document was marked as Exhibit 71 for
13 identification, as of this date.)

14 Q And then Exhibit 71 is a
15 report from Brean Capital, dated
16 September 8th, 2014.

17 In the first-full paragraph
18 under investment summary, the sentence
19 starting "Outside of operating
20 activities," do you see that sentence?

21 A Sorry. Is this the report
22 that created all the trouble?

23 Q Yes.

24 A You said "under operating
25 summary."

1 Q No. "Under investment
2 summary."

3 A Yes.

4 Q The sentence starting
5 "Outside of Operating Activities."

6 A Yes. That's the third
7 sentence.

8 Q Correct.

9 You think that information
10 in that sentence would be relevant to
11 preferred shareholders?

12 A I mean again, the
13 information about the preferred stock
14 offering would presumably be known to
15 preferred shareholders since they bought
16 the offering.

17 And I don't know when the
18 tax credits -- the receipt of the tax
19 credits was first reported. So this is
20 summarizing information that may or may
21 not be out there previously.

22 MS. POSNER: Can you repeat
23 back my question?

24 (The requested portion was
25 read back by the court reporter.)

1 A The information in that
2 sentence on this document may or may not
3 be relevant to preferred shareholders.
4 They would already have known it since
5 much of it seems to be stale.

6 Q I'm going to ask it for a
7 third time.

8 Do you think the actual
9 information would be relevant to
10 preferred shareholders?

11 MR. BALLARD: Objection to
12 form.

13 A When it came out, yes.

14 Q If you continue down this
15 first page under balance sheet received
16 several capital injections, they talk
17 about one of the preferred Series C
18 offerings, and then they talk about their
19 credit facility and tax credits and
20 Miller's available liquidity. Do you see
21 that?

22 A Yes.

23 Q Do you think that
24 information would be relevant to
25 preferred shareholders?

1 A Yes. Again, when it came
2 out.

3 Q Analyst reports typically
4 come out after SEC filings and earnings
5 calls; correct?

6 A Correct. And that's because
7 analysts, you know, integrate the
8 information, analyze it and provide
9 opinions on that information.

10 Q Are you aware that Miller
11 Energy also discussed its preferred
12 securities in its SEC filings?

13 A Yes.

14 Q And are you aware that
15 Miller Energy also discussed its
16 preferred offerings in its earnings
17 conference calls?

18 A Yes.

19 Q Are you aware that Miller
20 Energy discussed its liquidity on its
21 earnings conference calls?

22 A Yes. These are the type of
23 information that are in, you know,
24 earnings conference calls, SEC filings
25 and such. So, yes, I'm aware.

1 Q Are you also aware that
2 Miller Energy discussed the payment of
3 dividends to its preferred shareholders
4 on its earnings conference calls?

5 A On all of them or on some of
6 them?

7 Q Some of them.

8 A Yes.

9 THE VIDEOGRAPHER: We're
10 going off the record at 9:23 a.m.

11 (A short recess was taken.)

12 THE VIDEOGRAPHER: We're
13 back on the record at 9:35 a.m.

14 Q Dr. Attari, I'm going to
15 direct your attention to pages 59 and 60
16 of your report, paragraphs 174 through
17 177. Do you have that in front of you?

18 A Yes.

19 Q In your report, you don't
20 dispute that the number of market makers
21 of Miller Energy's common stock meets the
22 standard under Cammer; correct?

23 A I don't dispute that, yes.

24 Q And what is Cammer Factor 3?
25 This is the market maker's factor.

1 A Sitting here, I can't recite
2 it for you.

3 Q What is the purpose of this
4 Cammer factor?

5 A To test whether there were a
6 number of market makers, so that you
7 would have a market that was orderly and
8 liquid.

9 Q And in Cammer, the company
10 at issue was trading in the
11 over-the-counter market; right?

12 A Yes.

13 Q And why for a security
14 that's traded on the over-the-counter
15 market would market makers be important?

16 A Because if you didn't have
17 market makers, it would be more difficult
18 for investors to trade the security.

19 Q And in the over-the-counter
20 market, those market makers provide
21 liquidity to investors; correct?

22 A Correct.

23 Q And Miller Energy's
24 securities, both the common stock, the
25 Series C and the Series D did not trade

1 over-the-counter; correct?

2 A Correct. But the structure
3 of equity markets has changed over the 30
4 years since Cammer.

5 Q They all traded on the New
6 York Stock Exchange; correct?

7 A They were listed on the New
8 York Stock Exchange. They traded in a
9 number of different venues.

10 Q Fair enough.

11 The New York Stock Exchange
12 has a computerized system to match orders
13 and provide quotes that does not rely on
14 market makers; correct?

15 A Yes. I believe the
16 over-the-counter markets may also have
17 had that back in the day.

18 Q At the time at Cammer, you
19 think that's correct?

20 A I don't know.

21 Q You criticized Mr. Coffman
22 for not providing information on the
23 number of market makers for the Series C
24 and Series D; correct?

25 A I just note that he does

1 not.

2 Q Did you determine that there
3 was an insufficient number of market
4 makers for the Series C and Series D to
5 meet this Cammer factor?

6 A I just say that there is no
7 evidence. So this is not something where
8 we can say that the security meets this
9 factor.

10 Q If you turn to page 22 of
11 your report, in paragraph 67, you're
12 talking here about how the Series C
13 trade; correct?

14 A Yes.

15 Q And in this paragraph, you
16 talk about the fact that there were
17 market makers for the Series C; correct?

18 A I don't see where you see
19 that.

20 Q You're discussing the
21 brokerage houses.

22 And you say, "Brokerage
23 houses sent orders placed by investors to
24 the securities exchanges such as the New
25 York Stock Exchange or other market

1 venues where the orders trade against
2 orders placed by other investors or
3 against a bid or an offer placed by a
4 market maker." Do you see that?

5 A Yes.

6 Q I assume you're --

7 A Or a market maker.

8 Q You're talking here about
9 there being a market maker for the Series
10 C; correct?

11 A Yes. Or market maker, yes.

12 Q If you go to the paragraph
13 right below it, paragraph 68, in the
14 third sentence, you talk about the fact
15 that Mr. Zeisman's purchases of the
16 Series C were quickly executed. Do you
17 see that?

18 A Quickly executed, I'm trying
19 to look for those words. And I'm not
20 seeing them.

21 Q It's the further line down.

22 A Yes. The order was quickly
23 executed, yes.

24 Q And the fact that the order
25 was quickly executed indicates that the

1 market for the preferred securities was
2 liquid; correct?

3 A Yeah. We know that there
4 was a certain amount of trading volume
5 for these securities, yes.

6 Q And the fact that the order
7 was quickly executed is consistent with
8 an efficient market, isn't it?

9 A The fact that the order was
10 quickly executed is consistent with there
11 being volume.

12 Q And does the fact that there
13 was volume indicate that the market was
14 efficient?

15 A I think we spoke about the
16 volume related to Cammer factor earlier.
17 And I said that the turnover for the
18 Series C and Series D met the Cammer
19 thresholds. So, yes.

20 Q Let's turn to pages 63 to 65
21 of your report. And this is paragraphs
22 189 through 193.

23 And you're talking about the
24 Cammer factor dealing with the Form S-3?

25 A Yes.

1 Q And you agree with
2 Mr. Coffman that there were times during
3 the proposed class period when Miller
4 Energy was eligible to file an S-3;
5 correct?

6 A I agree that there were
7 times when Miller Energy was eligible to
8 file an S-3, yes.

9 Q And, in fact, Miller Energy
10 sold securities pursuant to S-3 during
11 the class period; correct?

12 A Miller Energy sold
13 securities pursuant to an S-3 during the
14 class period.

15 Q And if you turn to page 64
16 of your report, paragraph 191 --

17 A Yes.

18 Q -- you state, "Mr. Coffman
19 ignores that the use of Form S-3 requires
20 that 'the aggregate market value of the
21 voting and non-voting common equity held
22 by non-affiliates of the registrant is
23 75 million or more.'" Do you see that?

24 A Yes.

25 Q And then you cite there to

1 SEC Form S-3. Do you see that?

2 A Yes.

3 Q Did you actually review that
4 document?

5 A Yes.

6 (The above-referred-to
7 document was marked as Exhibit 72 for
8 identification, as of this date.)

9 Q So I've placed in front of
10 you what's been marked as Exhibit 72.
11 This is the Form S-3 rule by the SEC that
12 you cite in your report. Do you
13 recognize this document?

14 A Yes.

15 Q Do you know when the
16 requirements for this rule were put in
17 place?

18 A No.

19 Q I'll represent to you that
20 they were put in place in 2007 prior to
21 the start of your proposed class period.

22 MS. POSNER: I'm going to
23 mark one more document.

24 (The above-referred-to
25 document was marked as Exhibit 73 for

1 identification, as of this date.)

2 Q And I've handed you what's
3 been marked as Exhibit 73 which is a
4 discussion of the Form S-3 rule change in
5 2007.

6 Have you ever reviewed this
7 document before?

8 A No.

9 Q I'm going to direct your
10 attention to page 14 of this document.
11 And if you could review what it states
12 under Subheading B, Amendments to Form
13 S-3 through those first four bullet
14 points on page 15. Let me know when
15 you're done.

16 A Do you want me to read the
17 whole section?

18 Q You can read as much as you
19 want. But I just want to address your
20 attention to the first four bullet points
21 and the few sentences before it.

22 A Okay.

23 Q Doesn't this state that
24 they're actually changing the rule to get
25 away from the requirement that there be a

1 75 million public vote requirement for
2 Form S-3?

3 A It seems to. But I wouldn't
4 be able to tell you without reading more
5 of the document.

6 Q You can turn back to
7 Exhibit 72, the actual rule.

8 And if you go to page 2 of
9 this document under eligibility
10 requirements for use of Form S-3, that's
11 Subheading 1, and then there is
12 Subheading A, which has the registrant
13 requirements. Do you see that?

14 A Yes.

15 Q Nowhere in here does it talk
16 about a requirement that there be a
17 \$75 million public float; correct?

18 A It's under transaction
19 requirements.

20 Q And it's actually only under
21 one of the transaction requirements;
22 correctly?

23 A Correct.

24 Q It's under B-1 primary
25 offerings by certain registrants; right?

1 A Yes.

2 Q And it lists a whole host of
3 other types of transactions that don't
4 have a \$75 million public float
5 requirement; correct?

6 A I think some of the others
7 have other requirements in terms of the
8 size of the offering and such.

9 Q But no requirement that
10 there be a \$75 million public float?

11 A Correct.

12 Q Did Miller Energy conduct
13 any of the public offerings discussed
14 under B-1 where the \$75 million float
15 requirement is after December 1, 2014
16 when its float fell below 75 million?

17 A Sorry. I did not understand
18 that question.

19 Q Sure. That was a mouthful.
20 Miller Energy had already
21 issued its initial primary offerings
22 prior to December 1st, 2014 when its
23 float fell below 75 million; correct?

24 A Correct.

25 Q So according to Exhibit 72

1 and 73, they actually were eligible to
2 file pursuant to S-3 during the proposed
3 class period, except for the time periods
4 when they did not file their Form 10-K on
5 time; correct?

6 A Again, I mean -- you know, I
7 would need to read these documents,
8 Exhibit 73, more carefully to make sure I
9 understand that the 75 million cap or
10 float was no longer irrelevant.

11 Q If a company trades
12 efficiently and is S-3 eligible and then
13 becomes ineligible due to a late filing,
14 how would that impact the ability of the
15 market to reflect publicly-available
16 information?

17 A I don't know that -- sorry.
18 Can you repeat that question?

19 MS. POSNER: Can you read
20 that back?

21 (The requested portion was
22 read back by the court reporter.)

23 A I mean the S-3 eligibility
24 in the Cammer factors, the judge seems to
25 be focused on the public float being

1 sufficient to attract enough investors.

2 That's in paragraph 189.

3 So as the float -- as the
4 value falls, presumably, the number of
5 investors will be interested is reduced.
6 And the market is likely to be less
7 efficient than before.

8 MS. POSNER: Can you repeat
9 back my question again?

10 (The requested portion was
11 read back by the court reporter.)

12 A So if it becomes ineligible
13 because of a late filing, investors are
14 not getting information in a timely
15 fashion. So the securities would become
16 less efficient because now there's kind
17 of a lack of information and more
18 uncertainty.

19 Q How late was Miller Energy
20 in filing its Form 10-Ks?

21 MR. BALLARD: Objection to
22 form. Do you have a time period
23 you're focusing on?

24 MS. POSNER: Why don't we
25 start with the first one.

1 A Sitting here, I can't tell
2 you precisely.

3 Q It was no more than a few
4 weeks; correct?

5 A If that's what you are
6 stating, I'll accept that.

7 Q How about the 10-K towards
8 the end of the class period when they
9 were late filing? Do you know how late
10 they were with filing that 10-K?

11 A Did they file the 10-K
12 within the class period? My
13 understanding was that they didn't get
14 around to it. But I may be mistaken,
15 sitting here.

16 Q Are you aware of any
17 empirical support that a market becomes
18 less efficient when it moves from S-3
19 eligible to S-3 ineligible?

20 A No. But it seems to be
21 something that the Cammer judge decided
22 was important.

23 Q Let's turn to page 60 of
24 your report. And I'm going to direct
25 your attention to pages 60 to 62,

1 paragraphs 178 through 182.

2 And you're talking here
3 about the Krogman factor dealing with
4 market capitalization. Do you see that?

5 A Yes.

6 Q And in your report, you
7 don't dispute that Miller Energy's common
8 stock market capitalization meets the
9 standard under Krogman; correct?

10 A I don't believe that there
11 is a standard as in a threshold under
12 Krogman. I'm just making the point here
13 that Mr. Coffman has provided the
14 information for the common but has not
15 provided it separately for the C and the
16 D.

17 Q Do you dispute Mr. Coffman's
18 opinion that the market cap for the
19 common stock did meet the Krogman factor?

20 A I don't have an opinion on
21 that.

22 Q What do you think the
23 purpose of this Krogman factor is?

24 A I believe it's another
25 window on this idea that a larger -- a

1 security with a large amount outstanding
2 is likely to attract more investor
3 interest.

4 Q And on page 60,
5 paragraph 178 of your report, you quote
6 the Krogman court. And you say, "The
7 court and Krogman v. Sterritt, 2001,
8 noted that 'the market capitalization
9 calculated as the number of shares,
10 multiplied by the prevailing share price,
11 may be an indicator of market efficiency
12 because there is a greater incentive for
13 stock purchasers to invest in more highly
14 capitalized corporations.'" Do you see
15 that?

16 A Correct. And that's what I
17 just said in response to your previous
18 question.

19 Q And you opine in your report
20 that the Series C and Series D should be
21 independently analyzed for purposes of
22 this Krogman factor; correct?

23 A Correct.

24 Q And why is that?

25 A Because we are trying to

1 determine whether the market for the
2 Series C and the Series D on a
3 stand-alone basis were efficient.

4 Q If the point is, is that
5 stock purchasers might be incentivized to
6 purchase "in more highly capitalized
7 corporations," why does analyzing the
8 market capitalization of each type of
9 security make sense?

10 A Because you can have -- so
11 typically,, the way the capitalization of
12 a corporation is computed is the number
13 of shares times the value of the shares.
14 And it's typically a concept that is
15 applicable only to the common stock of
16 the company.

17 Here, what we're trying to
18 do is evaluate a preferred security. And
19 so if you take the same concept, which is
20 relevant at a security level and apply it
21 to the security that we're trying to
22 analyze, then what we need to do is look
23 at each of the securities separately.

24 MS. POSNER: Can you read
25 back my question?

3 A I think I answered it. Is
4 there something specific that I'm
5 missing?

6 Q The factor goes to whether
7 the corporation itself is highly
8 capitalized; correct?

9 A If that's what the factor
10 goes to, then I think one only needs to
11 do the common. And that's the relevant
12 thing. But I disagree that that's what
13 the factor goes to.

14 Q You disagree that the words
15 say "stock purchasers to invest in more
16 highly capitalized corporation" as you
17 quote in paragraph 178 of your report?

18 A Yes. It talks about stock
19 purchasers. It doesn't talk about
20 preferred stock purchasers or bond
21 purchasers, you know, buying because
22 of -- the market capitalization of the
23 corporation is high.

24 Q Why don't we turn to page 65
25 of your report and 66 which is paragraphs

1 194 through 196.

2 And again, you don't in your
3 report dispute that the bid ask spread of
4 Miller Energy's common stock meets the
5 standard under Krogman; correct?

6 A Could you repeat the
7 question?

8 Q In your report, you don't
9 dispute that the bid ask spread of Miller
10 Energy's common stock meets the standard
11 under Krogman; correct?

12 A Again, I don't think this is
13 a factor where there is a threshold level
14 that's specified in the Krogman opinion.
15 But sitting here, I may be mistaken. So
16 I don't have an opinion about the common
17 stock.

18 Q You don't dispute
19 Mr. Coffman's findings; correct?

20 A I don't have an opinion.

21 Q And then with regard to the
22 Series C and Series D, you don't dispute
23 that the bid ask spread for both the
24 Series C and the Series D meets the
25 standard under Krogman until the last

1 eight months of the class period;
2 correct?

3 A Again, I don't have an
4 opinion until the last eight months of
5 the period.

6 Q And during the last eight
7 months of the class period, why do you
8 believe that the bid ask spreads of
9 Miller Energy's Series C and Series D
10 securities increased?

11 A I have not looked into why
12 they increased.

13 Q Are you familiar with the
14 academic literature that demonstrates
15 that bid ask spreads tend to increase as
16 price per share falls?

17 A I'm aware of the academic
18 literature that says that lower-priced
19 securities have wider bid ask spreads
20 proportionately. I don't know of
21 available literature that has looked at a
22 single security through time.

23 Q In your opinion, if a market
24 for a given stock is generally efficient
25 and then the market price falls to a

1 level causing the bid ask spread to
2 increase, does that suggest that the
3 market is less able to price in new
4 information?

5 A Yes, because it becomes more
6 expensive for investors to trade, for new
7 information to be impounded into prices.

8 Q Becomes more expensive, but
9 it doesn't become difficult for that
10 information to be impounded; correct?

11 A Because it's more expensive,
12 less of the information gets impounded.
13 The information gets impounded less
14 quickly. So you can have various factors
15 that cause the price to be less
16 efficient.

17 Q Is it your opinion that for
18 the Series C and Series D for the last
19 eight months of the class period that
20 they were impounding new information
21 slowly?

22 A In this section, I'm looking
23 at this particular factor which the
24 courts have specified. And I'm noting
25 that the bid ask spreads increased which

1 would go against a finding of efficiency.

2 MS. POSNER: Can you read
3 back my question, please?

4 (The requested portion was
5 read back by the court reporter.)

6 A I don't have an opinion on
7 that.

8 Q Wouldn't an increase in bid
9 ask spreads in response to greater
10 uncertainty and lower prices be an
11 indication that the market prices are
12 responding to information as you would
13 expect in an efficient market?

14 A I don't see how.

15 Q Are you aware of any
16 companies that had a threat of delisting
17 or bankruptcy that did not lead to
18 increased bid ask spreads?

19 A Could you read that back?

20 (The requested portion was
21 read back by the court reporter.)

22 A Sitting here, no.

23 Q Let's turn to page 62 of
24 your report.

25 I'm going to direct your

1 attention to pages 62 to 63, paragraphs
2 183 to 186. You're talking about the
3 institutional ownership for the Season Ds
4 here.

5 In your report, you don't
6 dispute that there was substantial
7 institutional ownership of Miller
8 Energy's common stock throughout the
9 class period; correct?

10 A There were a number of
11 institutional owners in the common stock
12 over the class period.

13 Q In your opinion, is there a
14 number, a percentage of institutions that
15 must own a preferred security in order to
16 support that it is efficient?

17 A A threshold number, no.

18 Q You criticized Mr. Coffman
19 for not providing information on the
20 number of institutions that held the
21 Series C and Series D; right?

22 A I do not criticize him. I
23 just note that he has not provided
24 information.

25 Q What method should

1 Mr. Coffman have used to determine the
2 number of institutions that held the
3 Series C and Series D?

4 A I believe he says that the
5 information is not available. So I think
6 the point here is that the information is
7 not available. So we do not know that
8 there were institutional holders.

9 Q Did you do anything to
10 determine how many institutions held the
11 preferred Ds throughout the class period?

12 A I believe we may have tried
13 to pull the information and found it was
14 not available.

15 Q Do you have any reason to
16 believe that institutions did not hold
17 Miller Energy Series C and Series D?

18 A I have no reason to believe
19 that they did hold the Series C and
20 Series D.

21 MS. POSNER: You want to
22 repeat my question?

23 (The requested portion was
24 read back by the court reporter.)

25 A I have no beliefs on the

1 issue.

2 Q Why don't we turn to page 55
3 of your report. I'm going to direct your
4 attention to pages 55 to 56, paragraphs
5 161 to 166. You're talking about auto
6 correlation with regard to the C and Ds
7 in this section.

8 In your report, you discuss
9 that there are a number of ways to test
10 for auto correlation; correct?

11 A Correct.

12 Q And Mr. Coffman's auto
13 correlation test analyzed whether a
14 return on a given day is predictable by
15 the prior's day return?

16 A Corrected.

17 Q And then he conducted a
18 robustness check for every quarter of the
19 proposed class period; correct?

20 A I don't know that I would
21 call it a robustness check. He computed
22 it separately for every quarter of the
23 class period, correct.

24 Q Is it your opinion that the
25 methodology that Mr. Coffman used to test

1 for auto correlation is invalid?

2 A It's my opinion that it's
3 limited.

4 Q So your opinion is not that
5 it's invalid; just that it's limited; is
6 that correct?

7 A If the test is for auto
8 correlations, then it's invalid because
9 it only tests for a very limited form of
10 auto correlation.

11 Q Are you aware that dozens,
12 if not hundreds of courts, have accepted
13 the same auto correlation test that
14 Mr. Coffman conducted in securities fraud
15 class actions?

16 MR. BALLARD: Objection to
17 form.

18 A Could you repeat that,
19 please?

20 (The requested portion was
21 read back by the court reporter.)

22 A I'm not aware.

23 (The above-referred-to
24 document was marked as Exhibit 74 for
25 identification, as of this date.)

1 Q Dr. Attari, I've marked as
2 Exhibit 74, an expert report you
3 submitted in connection with that case we
4 were discussing earlier today, EGC;
5 correct?

6 A Correct.

7 Q Do you recognize this
8 report?

9 A Yes.

10 Q In this expert report, you
11 admit that "The most common tests for
12 auto correlation is the one that tests if
13 a return on a given day is predictable by
14 the prior day's return"; correct?

15 A Yes. sorry. What page?

16 Q If you go to page 8,
17 paragraph 28, the first sentence there --

18 A Yup.

19 Q -- in that case, you opined
20 that the stock at issue, EGC, was not
21 efficient; correct?

22 A Correct.

23 Q And the auto correlation
24 test you conducted there tested if a
25 return on a given day is predictable by

1 the prior day's return; correct?

2 A Correct.

3 Q And the plaintiffs' expert
4 conducted the same test; right?

5 A I have no recollection. I
6 don't think that he had conducted the
7 test prior to this.

8 Q As opposed to in his
9 rebuttal report?

10 A Correct.

11 Q You both conducted
12 robustness tests, but you used different
13 one-year time periods to conduct that
14 robustness check. Do you remember that?

15 A I recall what I did, yeah.
16 There were different periods, yes.

17 Q The results of your
18 robustness tests was one of the primary
19 basis for your opinions that EGC was
20 inefficient; correct?

21 A Yes. So in this case, what
22 I was testing was whether EGC's stock
23 price traded in an efficient market.
24 And, you know, as I note in my report in
25 Miller, there are an array of auto

1 correlation tests that can be used to
2 identify violations of market efficiency
3 and violations of weak form market
4 efficiency.

5 Mr. Coffman has done one of
6 those tests and claims that it somehow is
7 evidence of efficiency which is where --
8 kind of the flaw that I'm pointing out in
9 his work.

10 Q You conducted that same test
11 to determine that there was inefficiency
12 in the EGC case; correct?

13 A Correct.

14 Q And the plaintiffs' expert
15 there conducted the same test and came to
16 the opinion that the market for EGC was
17 efficient based in part on that auto
18 correlation test; correct?

19 A I don't believe that the
20 plaintiff expert did that. I think the
21 plaintiff expert -- and sitting here, I'm
22 kind of going from recollection.

23 Q Sure.

24 A The plaintiffs' expert
25 pointed out that my auto correlation

1 results -- that he had different results
2 on the tests I conducted. And since I
3 hadn't conducted a broader array of
4 tests, he was rebutting whatever I had
5 done.

6 Q The court in EGC determined
7 that plaintiffs' auto correlation test
8 was a factor supporting efficiency in
9 that case; correct?

10 A I have no recollection. I
11 thought it was more that my -- my
12 evidence had been rebutted by them
13 successfully, not that this was a factor
14 in supporting efficiency.

15 (The above-referred-to
16 document was marked as Exhibit 75 for
17 identification, as of this date.)

18 Q I've marked as Exhibit 75,
19 the court's order in the EGC case, which
20 is Docket 10CV00252, in the Central
21 District of California. And I'll turn
22 your attention to pages 27 and 28 of this
23 order.

24 A I was just looking up the
25 EGC report for something that you had

1 asked earlier. What pages?

2 Q 27 and 28.

3 A Yes.

4 Q And in this section, the
5 court finds that the plaintiffs' experts
6 auto correlation study found no
7 significant auto correlation for EGC's
8 returns over the class period.

9 That's the second-full
10 paragraph under the heading.

11 And then it discusses your
12 position with regard to auto correlation.
13 And ultimately, the court holds that the
14 factor weighs in plaintiffs' favor on
15 page 28; correct?

16 A Right, as in it doesn't
17 weigh in defendant's favor. I don't
18 think this is evidence of efficiency.
19 The evidence that I had provided against
20 efficiency did not hold.

21 Q So when the court says "the
22 factor weighs in plaintiffs' favor," you
23 don't understand that to mean that the
24 court is finding that plaintiffs' expert
25 has demonstrated a factor that supports

1 market efficiency?

2 A No. I believe that it's
3 that the defendant's expert had -- did
4 not support market inefficiency.

5 Q I'm going to show you what
6 was previously marked as Exhibit 42. And
7 it's just portions of Exhibit 42. It's
8 the coversheet and then pages 57, 58, 59,
9 60 and Exhibit 17C and 17D from the
10 corrected report of Chad Coffman. Do you
11 see that?

12 A Yes.

13 Q Just trying to save a few
14 trees here.

15 If you turn to Exhibit 17C
16 and Exhibit 17D, charts or tables in
17 Mr. Coffman's report --

18 A Yes.

19 Q -- do you agree that the
20 auto correlation coefficient switches
21 inconsistently from positive to negative
22 and back throughout the class period for
23 both the Series C and Series D?

24 A It switches from positive to
25 negative and back. Actually, sorry. It

1 switches from negative to positive and
2 back.

3 Q And if the auto correlation
4 coefficient reverses regularly, is that
5 consistent with the ability of an
6 arbitrage opportunity?

7 A It could be consistent with
8 the ability for an arbitrage opportunity.
9 It's just not consistent, you know, with
10 an arbitrage that says I will use, yes,
11 it is, a return to predict today's return
12 or today's return to predict tomorrow's
13 return. It could be more complex
14 opportunities.

15 Q Can you explain what kind of
16 complex arbitrage opportunity would be
17 able to take place where the auto
18 correlation coefficient reverses
19 regularly like this?

20 A Sitting here, I haven't done
21 the work for it. But there are a number
22 of different trading strategies that
23 people have published over the years.

24 And this just says that you
25 need to look at something more complex

1 than using, yes, it is, a return to
2 predict today's return.

3 Q In a market with no auto
4 correlation, would you expect to observe
5 the sign on the coefficient change
6 regularly or would you expect to observe
7 the same sign?

8 A In a market with no auto
9 correlation, I would expect the sign to
10 change. But I won't expect any of the
11 auto correlations to be statistically
12 significant.

13 Q So it's your opinion that in
14 a market with no auto correlation, there
15 could not be any statistically
16 significant auto correlations?

17 A Well, if you looked at a
18 large enough -- if you looked at a large
19 enough number of auto correlations, so,
20 you know, you'd find 5 percent of them to
21 be statistically significant. But the
22 percentages that are statistically
23 significantly exceeds that 5 percent
24 threshold.

25 Q So your opinion is that it

1 would have to be less than 5 percent in
2 order for there to be no auto
3 correlation?

4 A Well, if it is randomly
5 generated auto correlation, so let's say
6 that I have an un-auto correlated series,
7 I have generated a set of random numbers
8 to not be auto correlated and then I
9 compute auto correlations on them and I
10 do this experiment over and over
11 thousands of times, then just basic
12 statistics tells me that 5 percent of the
13 time, I will find an auto correlation
14 that is different than 0 at the
15 95 percent significance level.

16 Q That's a little bit
17 different, though, than what I just asked
18 you.

19 MS. POSNER: Why don't you
20 read that back.

21 (The requested portion was
22 read back by the court reporter.)

23 A I didn't understand the
24 question. And I was trying to explain.

25 Q So let me try to ask it a

1 different way then.

2 Can a statistically
3 significant auto correlation coefficient
4 appear based upon the timing of news?

5 A You'll have to provide more
6 of an example, more information than
7 that.

8 Q What are the bases that
9 could cause auto correlation to be
10 statistically significant?

11 A Over what window of time?

12 Q Any window of time.

13 A I really don't know. I
14 don't understand the question, is the
15 problem. What causes auto correlation to
16 be statistically significant is if you
17 have systematic reversals or systematic
18 continuations and returns.

19 Q Are those the only reasons
20 that you could see statistically auto
21 correlation coefficients?

22 A I think mathematically,
23 that's what would give you a positive or
24 negative auto correlation. And if it
25 were not systematic, it's unlikely to be

1 statistically significant.

2 Q Let's turn to page 63 of
3 your report. This is paragraphs 187 and
4 188. You're talking about the options
5 factor here.

6 In your report, you don't
7 dispute that there was options trading on
8 Miller Energy's common stock throughout
9 the proposed class period; correct?

10 A No, I don't.

11 Q Mr. Coffman did not opine
12 that there was option trading on the
13 Series C or Series D; correct?

14 A I don't recall.

15 Q Were there any barriers to
16 options trading on the preferred
17 securities?

18 A I'm not sure I understand
19 the question.

20 Q Is there any reason why
21 there couldn't be options trading on the
22 Series C or Series D?

23 A I mean I don't think I'm
24 talking about traded. I'm talking about
25 listed. So there were no listed options.

1 Q Correct.

2 My question is, is there any
3 reason why there could not be any listed
4 options on the preferred Series C or
5 Series D?

6 A Sitting here, I don't know.

7 Q What are the reasons why
8 there might not be options traded on a
9 given security?

10 A Often, if the underlying
11 market is not sufficiently deep and
12 liquid, people will not list options. So
13 that could be one of the barriers.

14 Q Any other barriers that you
15 can think of or any other reasons why
16 there might not be options trading on a
17 given security?

18 A Sitting here, no.

19 Q Do you know how common it is
20 for there to be options traded on
21 preferred securities?

22 A No.

23 Q Let's turn to page 66 of
24 your report. And I'm going to turn your
25 attention to pages 66 through 71. And

1 it's paragraphs 197 to 208.

2 And this is your discussion
3 of the 10(b) damages and whether they can
4 be calculated on a class-wide basis. Are
5 you there?

6 A Yes.

7 Q You provide one reason for
8 your opinion that Section 10(b) damages
9 cannot be calculated on a class-wide
10 basis; correct?

11 A I provide an explanation of
12 why Section 10(b) damages cannot be
13 computed on a class-wide basis.

14 Q And the reason that you
15 provide is that according to you, the
16 methodology proposed by Mr. Coffman does
17 not properly distinguish between
18 high-risk and low-risk investors;
19 correct?

20 A That's the explanation, yes.

21 Q I'm going to turn your
22 attention to page 70, paragraph 207.

23 And you say here, "Where
24 plaintiffs pursue a materialization of
25 the risk theory, I understand the damages

1 depend on the risk tolerance of the
2 investors in the proposed class." Do you
3 see that?

4 A Yes.

5 Q Where did you get that
6 understanding?

7 A From discussions with
8 counsel and from a review of an opinion
9 in, I think, the BP case.

10 Q Are you an attorney?

11 A No. That's why I discussed
12 with counsel.

13 Q Fair enough.

14 If your understanding is
15 incorrect, how does that impact your
16 opinion regarding the ability to
17 calculate Section 10(b) damages on a
18 class-wide basis?

19 MR. BALLARD: Objection to
20 form.

21 A It depends on how it is
22 incorrect.

23 Q If there is no requirement
24 when plaintiffs pursue a materialization
25 of the risk theory that damages depend on

1 the risk tolerance of the investors in
2 the proposed class, how would that impact
3 your opinion with regard to the ability
4 to calculate 10(b) damages on a
5 class-wide basis?

6 A So all investors are treated
7 the same. This reason would not be
8 relevant.

9 Q If plaintiffs and
10 Mr. Coffman are proposing to use an
11 out-of-pocket methodology that seeks to
12 measure the mispricing in the security at
13 each point in time as the basis for
14 competing damages, do your opinions still
15 apply?

16 A No.

17 Q In his report or during his
18 testimony, did Mr. Coffman ever suggest
19 he was proposing that damages be
20 calculated in any way other than the
21 standard out-of-pocket methodology?

22 MR. BALLARD: Objection to
23 form.

24 A Mr. Coffman did not. But
25 the complaint and the motion to dismiss

1 indicate that it is a materialization of
2 risk-base damage that plaintiffs are
3 asking for.

4 Q But that understanding is --
5 strike that.

6 The relevance of what you
7 just mentioned, that the plaintiffs
8 allege a materialization of the risk
9 theory, is your understanding that
10 somehow that the risk tolerance of the
11 investors is relevant in those
12 circumstances; correct?

13 A Can you read that back,
14 please?

15 (The requested portion was
16 read back by the court reporter.)

17 MR. BALLARD: Objection to
18 form.

19 A I don't understand the
20 question.

21 Q Let me rephrase it. It was
22 a poorly-phrased question.

23 Plaintiffs don't allege a
24 theory of damages outside of
25 out-of-pocket damages in their complaint;

1 correct?

2 A I thought every disclosure
3 says that risk materialized. So I don't
4 know how to read that other than it being
5 a materialization of risk theory.

6 Q And your assumption is that
7 if there's a materialization of the risk
8 theory, then somehow you have to
9 differentiate between high-risk and
10 low-risk investors?

11 MR. BALLARD: Objection to
12 form.

13 A Well, if it's a
14 materialization of risk theory, then you
15 may have to distinguish between high-risk
16 and low-risk investors.

17 Q And that's based on your
18 understanding from counsel; correct?

19 MR. BALLARD: Objection to
20 form.

21 A And from reading the Ludlow
22 opinion.

23 Q Did Mr. Coffman suggest
24 anywhere in his report or during his
25 testimony that the proper measure of

1 damages for purchasers of Miller
2 securities would consist of 'compensation
3 based on the full price decline' on the
4 corrective disclosures?

5 A I don't recall, sitting
6 here, what he wrote in his report and his
7 deposition. A number of the disclosures
8 in the complaint seem to have nothing to
9 do with the alleged misstatements.

10 Q Are you aware that the
11 out-of-pocket methodology has been used
12 in numerous cases alleging a
13 materialization in the risk theory?

14 A I'm not aware of that.

15 Q Let's turn to your
16 discussion in Section 11 damages. And
17 this is pages 19 through 34 of your
18 report. And it's paragraphs 54 through
19 111. Are you there?

20 A Yes.

21 Q I'm going to try to combine
22 the C and Ds so we don't have to do this
23 twice.

24 On page 19 of your report,
25 paragraph 56 and then on page 28 of your

1 report, paragraph 89, the first
2 paragraph, you're discussing the Series
3 C, and then the second paragraph, you're
4 discussing the Series D.

5 A Yes.

6 Q You say that "The existence
7 of a statutory damages formula 'renders'
8 knowledge of the individual circumstances
9 of each proposed class member
10 irrelevant.'" Do you see that?

11 A Yes.

12 Q And you cite to
13 paragraph 102 of Mr. Coffman's report;
14 correct?

15 A Correct.

16 Q So let's look back at
17 Exhibit -- what was Exhibit 42,
18 Mr. Coffman's report and the portions of
19 it.

20 And if you look at
21 paragraph 102 of his report, all it says
22 there is "That given there's a
23 statutorily defined formula for
24 Section 11 damages, it is clear that
25 damages under Section 11 can be

1 calculated using a common methodology for
2 members of the Section 11 class";
3 correct?

4 A Correct.

5 Q He doesn't say anything
6 about the irrelevance of knowledge and
7 the individual circumstances of each
8 proposed class member; right?

9 A Well, a common methodology
10 implies that the individual circumstances
11 are not relevant.

12 Q The individual circumstances
13 that you're talking about here are which
14 offering they purchased in or traceable
15 to, the price they paid and either the
16 price they sold their shares at or
17 evidence that they held through the
18 filing of the complaint; correct?

19 A Yes.

20 Q Are you aware of how the
21 claims process works in securities fraud
22 class actions?

23 A Yes.

24 Q And are you aware that
25 members of the class submit trading

1 information and that there's a
2 court-appointed claims administrator that
3 confirms the completeness and accuracy of
4 the claims submitted?

5 A Yes.

6 Q And that's with regard to
7 both Section 11 claims and Section 10(b)
8 claims; correct?

9 A Correct. As far as I know,
10 the information they submit is when they
11 purchase, what price they purchase, when
12 they sold, what price they sold. It does
13 not provide information that would allow
14 you to determine which offering the
15 securities came from.

16 Q The information submitted in
17 that claims process would include the
18 date of purchase; correct?

19 A It would include the date of
20 purchase.

21 Q And it would include the
22 price of purchase; correct?

23 A It would include the price
24 of purchase.

25 Q And it would also include

1 whether the purchase was made from an
2 underwriter directly; correct?

3 A If that information was
4 requested, yes.

5 Q Are you aware that there's
6 also a court-approved plan of allocation
7 which details how each claim is
8 calculated in securities fraud class
9 actions?

10 A Yes.

11 Q And you're aware that that
12 is true with regard to both Section 11
13 and Section 10(b) claims?

14 A Yes.

15 Q And with regard to a 10(b)
16 claim, you would need to know when an
17 investor purchased their shares and the
18 price they purchased at and when they
19 sold their shares and the price they sold
20 that in order to calculate their
21 Section 10(b) damages; correct?

22 A Yes.

23 Q Is it your position that in
24 a typical securities fraud class action,
25 you couldn't conduct class-wide damages

1 without that specific information?

2 A In a 10(b)?

3 Q In a 10(b) case.

4 A You can estimate damages.

5 You can compute damages.

6 Q You can come up with a
7 standard formula for calculating the
8 damages; correct?

9 A With the information or
10 without?

11 Q With the information.

12 A With the information, you
13 can come up with a formula for
14 calculating damages.

15 Q Is it your opinion that
16 Section 11 damages for investors who can
17 demonstrate that they purchased directly
18 in one of the offerings at issue in this
19 case cannot be calculated on a class-wide
20 basis?

21 A Prior to getting information
22 or after getting information?

23 Q After getting information
24 that they directly purchased in an
25 offering.

1 A So after you have
2 information on investors who purchase in
3 an offering, you can calculate damages
4 for the investors who purchase in the
5 offering.

6 If the class -- if there are
7 investors who haven't submitted the
8 information, you cannot compute damages
9 for all investors who may have purchased
10 in the offering.

11 Q If you had information, you
12 would use the statutory formula for
13 calculating Section 11 damages for that
14 individual; correct?

15 MR. BALLARD: Objection to
16 form.

17 Q Do you want me to repeat it?

18 A Yes.

19 Q Sure.

20 If you had an investor's
21 trading information, demonstrating that
22 they purchase directly in an offering,
23 you would use the Section 11 statutory
24 formula to calculate their damages;
25 correct?

1 A If you had their purchase
2 and sale information, you could compute
3 the damages to that investor for people
4 who purchase in the offering.

5 My understanding is here,
6 the class is defined only as people who
7 were damaged. So there would be some
8 people who were not damaged who wouldn't
9 be part of the class.

10 Q Let's turn to page 21 of
11 your report. And the similar information
12 is repeated on page 30 of your report
13 with regard to the Series D investors.

14 A What paragraph?

15 Q Paragraph 64 through 66 and
16 then paragraphs 95 on page 30.

17 Essentially, you're
18 discussing the DTC in both of these
19 sections?

20 A Yes.

21 Q You opine with certain
22 exceptions, purchasers of the Series C
23 and Series D cannot trace their shares
24 because they did not receive share
25 certificates.

1 And it said their stock was
2 held in book entry form at the DTC?

3 A Correct.

4 Q Are you aware that the
5 overwhelming majority of investors in
6 U.S.-based markets do not have share
7 certificates but instead hold their
8 shares in book entry form in the DTC?

9 A Yes.

10 Q And that's been the case
11 since at least 2011; correct?

12 A At least, yes.

13 Q Do you know when companies
14 essentially stopped issuing share
15 certificates?

16 A Sometime in the '70s. But I
17 may be getting the date wrong.

18 Q And on page 22 of your
19 report, paragraph 67, you note that
20 investors who trade through brokerage
21 houses have no way of knowing who sold
22 the securities they purchased or who
23 purchased the securities they sold. Do
24 you see that?

25 A Yes.

1 Q You're talking again here
2 about secondary market purchases, not
3 individuals who purchase directly in an
4 offering; correct?

5 A Correct.

6 Q That fact is true for
7 secondary market purchasers in any
8 security, not just investors in Miller
9 Energy's Series C and Series D; correct?

10 A Correct.

11 Q On page 25 of your report,
12 this is paragraph 79, you
13 state, "After-market purchasers, those
14 who purchase their shares in open-market
15 trading, not directly in one of the
16 public offerings, cannot trace their
17 shares to these offerings. Investors who
18 place orders in the open market will have
19 their brokerage settle that order through
20 the DTC by adjustment of the brokerage's
21 pro rata share of the security's fungible
22 bulk held at the DTC." Do you see that?

23 A Yes.

24 Q Again, that is true for
25 virtually any after-market purchaser

1 bringing a Section 11 claim, not just
2 investors in Miller Energy's Series C and
3 Series D; correct?

4 MR. BALLARD: Objection to
5 form.

6 A That is true for any
7 investor trading in the secondary market.

8 Q If you could trace an
9 investor's purchase to a specific Series
10 C or Series D offering and you knew the
11 price they purchased at and you knew the
12 price they paid at or whether they held
13 through the filing of the complaint, you
14 could calculate their damages according
15 to the statutory formula for Section 11
16 claims; correct?

17 Why don't I repeat it.

18 If you could trace an
19 investor's purchase to a specific Series
20 C or Series D offering, you knew the
21 price they purchased at and you knew the
22 price they sold at or whether they held
23 through the filing of the complaint, you
24 could calculate their damages according
25 to the statutory formula for Section 11;

1 correct?

2 A You would have the starting
3 point for their damages according to the
4 statutory formula. There's an offset for
5 unrelated declines that you'll still have
6 to incorporate, correct.

7 Q You're not offering an
8 opinion in this case with regard to
9 negative causation; correct?

10 A Not at this stage.

11 THE VIDEOGRAPHER: We're
12 going off the record at 10:40 a.m.
13 This marks the end of Media 2.

14 (A short recess was taken.)

15 THE VIDEOGRAPHER: We're
16 back on the record at 10:49 a.m.
17 This marks the beginning of Media 3.

18 Q I believe we discussed this
19 earlier.

20 But all of Miller Energy's
21 securities -- the common stock, the
22 Series C, the Series D -- all traded on
23 the New York Stock Exchange throughout
24 the proposed class period; correct?

25 A They were all listed on the

1 New York Stock Exchange and traded on a
2 bunch of venues.

3 Q If you turn to page 60 of
4 your report, I'm going to direct your
5 attention to your Footnote 208.

6 And there, you state your
7 opinion that there is strong disagreement
8 in the finance research literature on
9 whether U.S. equity markets are efficient
10 or prone to various anomalies and
11 behavioral biases.

12 And then you discuss the
13 fact that it's notable that the vast
14 majority of the finance literature
15 analyzes the stocks listed on the New
16 York Stock Exchange and NASDAQ, the same
17 major exchanges on which according to
18 Mr. Coffman, a listing virtually
19 guarantees market efficiency. Do you see
20 that?

21 A Yes.

22 Q In the EGC case we were
23 discussing earlier, you claimed that the
24 courts recognize that securities that
25 trade or listed on the New York Stock

1 Exchange are likely to be efficient,
2 didn't you?

3 A Likely to be, yes. And
4 sorry, courts. This is about the
5 academic research literature which has a
6 different perspective.

7 Q Sure.

8 But you also did admit in
9 that case as well that academic research
10 with regard to markets on which a
11 security trades is indicative of the
12 efficiency of the stock, didn't you?

13 A Sorry. Can you repeat that,
14 please?

15 (The requested portion was
16 read back by the court reporter.)

17 MR. BALLARD: Objection to
18 form.

19 A If you can show me that,
20 that will be helpful.

21 Q Look on what we previously
22 marked as Exhibit 74 which is your
23 report.

24 A Yes.

25 Q If you look on page 3 of

1 this report, paragraph 11, the end there
2 of that paragraph, you say, "First, while
3 it is not dispositive when a stock is
4 listed on a market that is not efficient
5 such as the OTCBB, it's far less likely
6 that it trades efficiently than a stock
7 listed on a national exchange." Do you
8 see that?

9 A Yes .

10 Q And the corollary to that
11 sentence is that a security that does
12 trade on a national exchange is more
13 likely to be efficient than not; correct?

14 A I missed the last bit. I
15 may have started speaking.

16 (The requested portion was
17 read back by the court reporter.)

18 A I don't see how that is the
19 corollary. All that you can get to is
20 that it's more likely to be efficient
21 than a security that trades on the OTCBB.

22 Q That's fair enough.

23 MS. POSNER: Let's mark
24 Exhibit 76.

25 (The above-referred-to

1 document was marked as Exhibit 76 for
2 identification, as of this date.)

3 Q This is a deposition
4 transcript of a deposition you gave in
5 the EGC case; correct?

6 A Correct.

7 Q Do you recognize this
8 transcript?

9 A I have not seen this. But,
10 yes, I remember being deposed.

11 Q You don't recall having to
12 sign the transcript?

13 A Probably. I must have seen
14 it.

15 Q If you turn to page 16 of
16 the transcript, and I'm going to direct
17 your attention to pages 16 through 19.
18 So if you want to review those quickly,
19 that might be easier.

20 A 16 to what?

21 Q 19.

22 A Okay.

23 Q So in the EGC case, you
24 testified under oath that it's an
25 "economically valid statement" to say

1 that the type of market a stock trades on
2 is indicative of efficiency; correct?

3 MR. BALLARD: Objection to
4 form.

5 A Yes.

6 Q And you also testified under
7 oath that the "academic literature in
8 general is supportive of that statement";
9 correct?

10 MR. BALLARD: Objection to
11 form.

12 A Generally, yes.

13 Q Generally, you actually
14 provided that statement under oath;
15 correct?

16 A In general, it says -- I
17 mean the whole point of the academic
18 literature is they're testing the
19 efficiency of NASDAQ and NYSE stocks. I
20 think 30, 40 years of hundreds of years
21 of research in finance has been wasted.

22 Q Did you perform an event
23 study of Miller Energy's common stock
24 during the proposed class period?

25 A No.

1 Q You're not offering the
2 opinion that Miller Energy's common stock
3 was inefficient during the proposed class
4 period; correct?

5 A I'm not offering an opinion,
6 one way or the other.

7 Q Let's turn back to your
8 report, pages 53 to 54, and primarily,
9 paragraphs 157 and 158.

10 Is it your opinion that
11 comparing earnings releases to non-news
12 days is not an appropriate methodology
13 for an event study?

14 A It depends on the purpose of
15 the event study.

16 Q So how about in this
17 specific case? Do you think it's an
18 inappropriate methodology in this case?

19 A In this case, in the context
20 of Mr. Coffman has used it or just
21 generally?

22 Q Generally for this case, is
23 that methodology an appropriate
24 methodology to use to determine whether a
25 market is efficient?

1 A I don't think it's an
2 approach that allows you to get to
3 that -- to be able to make a
4 determination of efficiency.

5 Q Are you aware that that
6 methodology is often called the FDT
7 methodology?

8 A I think Mr. Coffman may have
9 referred to it as that.

10 Q I actually don't think Mr.
11 Coffman did. But I'm asking you whether
12 you're familiar with that phrase, the FDT
13 methodology.

14 A I mean looking at the
15 footnote on the page, I'm guessing FDT is
16 Ferrillo Dunbar Tabak, no, I was not.

17 Q Are you aware that this
18 methodology of comparing earnings,
19 releases to non-news days is regularly
20 accepted by courts throughout the country
21 in certifying securities fraud class
22 actions?

23 MR. BALLARD: Objection to
24 form.

25 A With the threshold of

1 5 percent or with a different threshold?

2 Q I'm just talking about the
3 methodology itself.

4 A I'm aware that courts have
5 looked at -- that says one of the pieces
6 of information they evaluated.

7 Q In your footnote there,
8 Footnote 178, you claim that one of the
9 authors, Dr. Tabak, purportedly has
10 strong misgivings about the
11 appropriateness of this test. Do you see
12 that?

13 A Yes.

14 Q Are you aware that Dr. Tabak
15 has submitted expert reports to courts
16 using this methodology?

17 A I don't know. I mean if you
18 tell me that he has, maybe he has.

19 Q In conducting an event study
20 of a company's earnings releases, is it
21 your opinion that 50 percent of the
22 earnings release dates would need to be
23 statistically significant at the
24 95 percent level in order for an event
25 study to demonstrate market efficiency?

1 A I don't know that it's
2 50 percent precisely. But there is a
3 literature that has found that the
4 returns on earnings announcement days are
5 more volatile than on other dates.

6 And so based on the time
7 period that are at issue and the industry
8 at issue, one would be able to come up
9 with a threshold. And that threshold is
10 going to be much higher than 5 percent.

11 Q What do you think that
12 threshold should be?

13 A Well, it's not just a number
14 that I can make up; right? It's going to
15 be based on the level of volatility on
16 earnings announcements, relative to, you
17 know, no news or non-event days and the
18 time period that one is studying.

19 And based on those two
20 factors, if it turns out that earnings
21 announcements in general are twice as
22 volatile as no news days for the period
23 and, you know, for the comparable set of
24 companies, then you can take that
25 information and come up with an

1 appropriate threshold.

2 And if it's twice as
3 volatile, it'll be much higher than
4 5 percent of threshold. It could be --
5 you know, depending on that multiple,
6 50 percent could be the right number.

7 Q So what you're saying is in
8 your opinion, that threshold would be
9 different for every single company?

10 A The threshold could be
11 different for every company and time
12 period, yes.

13 Q And in this case, is it your
14 opinion that that threshold should be
15 50 percent?

16 A I don't have an opinion on
17 that.

18 Q So you don't have an opinion
19 on what the threshold should be at all?

20 A I have an opinion that it is
21 higher than 5 percent. I haven't done
22 the work to determine what the right
23 threshold is.

24 Q And you're saying higher
25 than 5 percent because that's the T-Stat

1 that you would expect to see outside
2 of -- explaining random movements?

A Correct, on non-news days.

7 Q This is a NERA report, dated
8 August 2016, by Dr. David Tabak, titled
9 "What Should we Expect when Testing for
10 Price Response to News in Securities
11 Litigation?"

12 Have you ever seen this
13 before?

14 A I probably have.

Do you know what NERA is?

16 A Yes.

17 O What is NERA?

18 A NERA is a firm that operates
19 in the same industry as we do.

20 Q They're, like you, like CRA,
21 typically a defense expert in securities
22 fraud class actions; correct?

MR. BALLARD: Objection.

24 A I don't know -- I know that
25 they are typically experts in various

1 kinds of litigation. I don't know
2 anything beyond that. And I wouldn't
3 classify us as being on the defendant's
4 side either.

5 Q Let's turn to page 2 and 3,
6 actually, 3 to 4 of this paper on pages 3
7 and 4.

8 Dr. Tabak goes through the
9 fact that what is referred to as the FDT
10 test has been regularly accepted by
11 courts. Do you see that?

12 A Sorry. Can you point me
13 to --

14 Q Yeah. The FDT Test and Its
15 Successes is the header.

16 A Okay.

17 Q And then it talks through
18 some of the court opinions on this
19 matter. And, in fact, on page 3 in the
20 middle of the page, it says, "More
21 recently, courts have accepted a number
22 of tests of market efficiency that
23 directly follow the FDT test procedures,
24 if not citing the FDT paper directly."

25 You see that?

1 A I see that.

2 Q If you turn to page 6 of
3 this report or this paper, in the
4 second-full paragraph right above the
5 heading Academic Literature --

6 A Sorry. There is a section
7 that follows the FDT test and its
8 successors that challenges to the FDT
9 test. And it talks about opinions on
10 both sides.

11 Q Correct.

12 It discusses the opinions on
13 the other side?

14 A Well, it discusses two
15 opinions on the other side. I don't know
16 if there are only two opinions on the
17 other side.

18 Q If you go to page 6 of this
19 paper right above academic literature, do
20 you see, it says, "There is no
21 theoretical or mathematical/statistical
22 reason to believe that the fraction of
23 news days associated with statistically
24 significant returns should exceed
25 50 percent as a general matter in an

1 efficient market"? Do you see that right
2 above the heading Academic Literature?
3 It's the last sentence. Do you see that?

4 A Yes.

5 Q Do you disagree with that
6 statement?

7 A No. This is just the same,
8 as I told you earlier, that, you know,
9 each -- for each company and time period,
10 you have to -- you could calculate the
11 threshold. And it may be higher than 50,
12 it may be below 50.

13 Q And if you turn to page 9,
14 in the second-full paragraph, he's
15 discussing the results of his analysis
16 which looked at all of the companies in
17 the S&P 500. And he looked at both the
18 day of an earnings release and the
19 following day of an earnings release.

20 And he finds that "Thus, the
21 argument that even a majority of news
22 announcements should be associated with
23 statistically significant returns would
24 not hold for approximately half of the
25 members of the S&P 500 under this set of

1 parameters." Do you see that?

2 A I see that. I just want to
3 make sure what the set of parameters are.

4 Q Sure.

5 A If he's looking at a two-day
6 window, then I would expect that he
7 probably finds a lower set that are
8 statistically significant.

9 Q If it's on page 7, it's the
10 runover sentence. And he's -- not both.
11 He's saying either the day of the
12 earnings announcement or the following
13 trading day or both.

14 A Okay.

15 Q Do you disagree with that
16 statement?

17 MR. BALLARD: Which
18 statement?

19 MS. POSNER: That the
20 argument that even a majority of news
21 announcements should be associated
22 with statistically significant
23 returns would not hold for
24 approximately half of the members of
25 the S&P 500 under this set of

1 parameters.

2 A Well, under the set of
3 parameters, he's making a statement about
4 a study he has conducted. And I'm
5 assuming that the numbers there line up
6 with what he's reporting in Table 1. So
7 I have no reason to disagree.

8 Q If an earnings release was
9 generally within market and analyst
10 expectations, would you expect to see a
11 statistically significant price reaction
12 to an earnings release?

13 A No.

14 Q And if an earnings release
15 provided few surprises, would you expect
16 to see a statistically significant price
17 reaction to the earnings release?

18 A So earnings releases contain
19 information about past performance and
20 often speak about the future. Analysts
21 and market participants have expectations
22 about both.

23 And I think your question
24 was limited to past performance. But I
25 may have misheard it. So it would be

1 both past performance and future. So the
2 totality of the information was
3 completely in line with what investors
4 expected. There wouldn't be a reaction.

5 Q And if an earnings release
6 contained both positive and negative
7 information for the company, would you
8 expect to see a statistically significant
9 price reaction to the earnings release?

10 A So, again, I think -- just
11 to be careful, statically significant
12 relative to what threshold, but, no. If
13 there were precisely offsetting, no. If
14 it contained a lot of positive
15 information and a little negative or vice
16 versa, you would end up with a large
17 return.

18 Q If material new information
19 was provided in an earnings release,
20 would you expect to see analyst reports
21 or press reports discussing the
22 information shortly thereafter?

23 A Typically, yes.

24 Q If analysts don't change
25 their buy, sell or hold recommendation

1 based on an earnings release, would you
2 expect to see a statistically significant
3 price reaction to the earnings release?

4 A I have no beliefs on that.

5 I mean I think that's a question that
6 could be researched generally
7 market-wide. And one would have to base
8 opinions on that. I'd be making a guess.
9 Your guess would be as good as mine.

10 Q Generally speaking, can you
11 explain what preferred stock is?

12 A Preferred stock is a
13 security that's a part of the capital
14 structure of firms. It's junior to the
15 debt, typically, and senior to the
16 common.

17 So preferred stockholders
18 get paid after debt holders have been
19 paid but before common stockholders are
20 paid. They typically have a stated
21 dividend. But the dividend can be -- the
22 company can miss a dividend payment
23 without triggering default.

24 Q Preferred stock is typically
25 a hybrid between equity and debt;

1 correct?

2 A Yes.

3 Q And would you agree with me
4 that preferred securities are generally
5 considered safer investments than common
6 stock?

7 A Generally, yes.

8 Q If a company has both common
9 stock and preferred stock, do you expect
10 the common stock and the preferred stock
11 to react in the same way to the same
12 information?

13 A In the same way as in the
14 same magnitude and direction, no.

15 Q Do you expect common stock
16 and preferred stock -- strike that.

17 Do you expect preferred
18 stock always to move in a statistically
19 significant way if the common stock moves
20 in a statistically significant way?

21 A The threshold for
22 statistically significance would be quite
23 different for the common and the
24 preferred because the common stock is
25 going to be much more volatile on a

1 day-to-day basis than the preferred.

2 So I don't know that I would
3 be able to make a statement about whether
4 they -- whether each time you saw a
5 statistically significant return for the
6 common, you'd see one for the preferred
7 and vice versa.

8 Q Meaning that sometimes, they
9 might both move statistically
10 significantly and sometimes they might
11 not; is that correct?

12 A And sometimes they might
13 move in the same direction. And
14 sometimes they might not.

15 Q Correct.

16 Would you expect a preferred
17 security to be sensitive to the same
18 information as a company's common stock?

19 A The same information would
20 be relevant, or similar information would
21 be relevant to both. But the common
22 stockholders might care about some
23 information more than the preferreds.
24 Some information that's positive for the
25 common could be negative for the

1 preferred and vice versa. So information
2 about the company would generally be
3 relevant to both common stockholders and
4 preferred stockholders.

5 Q Information pertaining to
6 revenue, earnings, profitability and
7 share price are very important to common
8 investors; correct?

9 A Yes. They are important to
10 common.

11 Q And while they're important
12 to preferred investors, they're not as
13 important; correct?

14 A I don't know that that's
15 necessarily the case. It is going to be
16 important to preferred shareholders also.

17 Q To the same degree?

18 A Not to the same degree. And
19 like I said, I mean some information
20 about these items may be positive for
21 common stockholders and negative for
22 preferred stockholders.

23 Q Would you agree with me that
24 information relevant to the debt
25 component of a preferred stock is the

1 most important information for preferred
2 stock investors?

3 A It is important information
4 for preferred stockholders. I don't know
5 if it's necessarily the most important.

6 Q Can you think of any kind of
7 factor that would be more important for a
8 preferred shareholder than information
9 pertaining to the debt component?

10 A One of the two preferreds
11 here was convertible. So, for example,
12 that one would have, you know, some of
13 the information that was relevant to
14 the -- the common would be relevant to
15 those investors also would be quite
16 relevant; you know, trying to rank all
17 the information is the bit that I'm just
18 a little hesitant about.

19 Q So you don't have an opinion
20 whether one is more important than the
21 other?

22 A I think I don't have an
23 opinion that -- a blanket statement that
24 I can make that over the life of the
25 company, it's always going to be this,

1 that's the most important.

2 Q On pages 42 and 43, I think
3 this is primarily paragraphs 133 and 134
4 and 135, you conduct what you call
5 "extended event study of Miller Energy's
6 Series C and Series D preferred stock,
7 using the returns that Mr. Coffman
8 provided"; correct?

9 A Yes. I summarized the
10 results of his event study.

11 Q The results that you
12 conducted are in Table 6 and 7 of your
13 report; is that correct?

14 A Yes, that is correct.

15 Q And based on that analysis,
16 your conclusion is neither the Series C,
17 nor the Series D reacted in a
18 statistically significant way at the
19 95 percent level to earnings releases;
20 correct?

21 A Correct.

22 Q In your opinion, if the
23 market for the Series C and Series D were
24 efficient, would you have expected to see
25 the Series C and Series D react in a

1 statistically significant way to earnings
2 releases throughout the class period?

3 A Can you read that back,
4 please?

7 A Yes. I mean, the thresholds
8 prior to October 15th, 2014 are quite
9 low. I think for the C, Mr. Coffman's
10 threshold is 1 percent. And for the D,
11 it's even less than 1 percent in terms of
12 standard deviation.

13 So, you know, the thresholds
14 for statistically significance are very
15 low. And I would have expected that
16 these investors would react to
17 information on the financial condition of
18 Miller.

19 Q Why would that be the case
20 since you also offer the opinion that
21 that methodology that Mr. Coffman uses of
22 comparing earnings releases to non-news
23 days is not sound?

24 A Sorry. Maybe I'm not
25 understanding the question. This is just

1 whether or not, there would be a
2 statistically significant reaction on
3 earnings days?

4 Q Right.

5 And you previously and other
6 parts of your report offer that the
7 opinion that comparing earnings releases
8 to non-news days is not a sound
9 methodology for determining market
10 efficiency, don't you?

11 A With a 5 percent threshold,
12 yes, it's not. But with an appropriate
13 threshold as we spoke of earlier, it
14 could be an approach. And it's an
15 approach that the courts seem to be
16 using.

17 Q Can you explain what you
18 mean when you say "with a 5 percent
19 threshold, yes, it's not"?

20 A So the courts have decided
21 to use the cause-and-effect analysis as
22 one of the inputs to a determination of
23 market efficiency.

24 And the point I made in a
25 different part of this report is that one

1 cannot get to a finding that --
2 economically, one cannot get to a finding
3 that the security reacted to information
4 by comparing the returns on earnings
5 announcement days to returns on no news
6 days without making an adjustment to the
7 threshold.

8 Now, if you did make an
9 adjustment to the threshold, you would
10 have a way of determining whether or not
11 the security was reacting or not reacting
12 to information. And that seems to be one
13 of the factors that the courts look at in
14 determining efficiency.

15 Q In conducting the analysis
16 in Table 6 and 7 of your report, did you
17 make that adjustment to the threshold?

18 A The threshold adjustment is
19 an adjustment that you'd make at the next
20 step. So I think in Mr. Coffman's
21 report, he has Exhibit 7, 9 and 11 that
22 correspond to the information that's in
23 my Exhibit 6 and 7. And then he has a
24 second set of exhibits, 8, 10 and 12,
25 which is where the threshold adjustment

1 would be needed.

2 And I don't even need to get
3 to that point of making an adjustment to
4 the threshold because I find that his
5 analysis suggests that Miller's
6 securities never reacted to the earnings
7 announcements.

8 Q Did you make a threshold
9 adjustment to Mr. Coffman's analysis with
10 regard to the common stock?

11 A No. I haven't done that
12 work.

13 Q Do you know what the results
14 would be if you did make that threshold
15 adjustment?

16 A I haven't done that work.
17 So I don't know the answer.

18 Q If you expect the preferred
19 stock to move in response to earnings
20 releases like you just testified, why
21 would analyst reports discussing the
22 earnings releases not be relevant to the
23 preferred shares?

24 A The earnings -- sorry. The
25 analyst reports contain information

1 that's relevant to the preferred shares.
2 The analyst reports, however, do not
3 analyze the preferred shares. They do
4 not provide a valuation opinion on the
5 preferred shares. They do not provide,
6 you know, advice to investors on whether
7 they should buy, sell or hold the
8 preferred shares.

12 Q Yet, the information that
13 they're purportedly analyzing is expected
14 to move the preferred shares in a
15 statistically significant way?

16 A The earnings -- the
17 information in the earnings is expected
18 to move the preferred in a statistically
19 significant way.

20 Q Even though it's your
21 opinion that the analyst reports
22 discussing that information are not
23 relevant to market efficiency for the
24 preferreds?

25 A The analyst reports

1 typically come out after the earnings
2 announcements. So by then, the
3 information in the earnings would already
4 be impounded in the securities prices if
5 they were efficient.

6 And what the analysts
7 provide is, you know, the icing on the
8 cake, the additional information on their
9 take and their opinions about the
10 information that came out. And there,
11 they don't do the analysis for the
12 preferreds. So they add little value to
13 the preferred.

14 Q The information in the
15 earnings would already be impounded in
16 the securities prices for the common
17 stock if it was efficient as well;
18 correct?

19 A Yes.

20 Q Are you aware that for debt
21 securities, courts analyze the Cammer
22 factors and event studies differently
23 than they do with regard to equity
24 securities?

25 A I am not aware of

1 differences.

2 Q Let's turn to page 50 of
3 your report. And I'm going to direct
4 your attention to pages 50 to 52,
5 paragraphs 151 to 154.

6 And you're discussing here
7 the price reaction on July 31st, 2015.

8 Are you there?

9 A Yes.

10 Q In your report, you state
11 that Miller's delisting was expected
12 prior to July 30th, 2015; correct?

13 A Correct.

14 Q You opine that Miller Energy
15 investors did not invest any unexpected
16 news information when the New York Stock
17 Exchange actually delisted Miller Energy
18 on July 30th, 2015; correct?

19 A Unexpected new information,
20 no news information, yes.

21 Q Did you review the analyst
22 reports discussing Miller Energy's
23 potential delisting prior to July 30th,
24 2015?

25 A I reviewed the analyst

1 reports. Sitting here, I don't have a
2 recollection of each and every one of
3 them.

4 Q I'm going to direct your
5 attention back to what we previously
6 marked as Exhibit 69.

7 And this is the May 1st,
8 2015 MLV equity research report. And
9 this is prior to the actual delisting on
10 July 31st, 2015; correct?

11 A Correct.

12 Q And if you go down to the
13 third heading, Assessment of SEC Wells
14 and NYSE Continued Listing Notices, Point
15 2 there, it states, "We expect the
16 company to return to compliance with the
17 continuing listing notice within its
18 six-month window." Do you see that?

19 A Yes. This is to a different
20 notice and the reason they were
21 ultimately delisted.

22 Q When they say that they
23 expect to return to compliance here, you
24 think this is a different issue?

25 A My recollection is that it's

1 a different issue.

2 (The above-referred-to
3 document was marked as Exhibit 78 for
4 identification, as of this date.)

5 Q This is an analyst report
6 from Imperial Capital on July 21st, 2015.
7 Do you see that?

8 A Yes.

9 Q If you turn to the second
10 page of the document, it's the carryover
11 on rationale, you see the last sentence
12 there, it notes that Miller is within an
13 18-month cure program that commenced in
14 May 2015? Do you see that?

15 A Yes.

16 Q Do you think they're talking
17 about a different delisting issue there
18 as well?

19 A Yes. I think if you look at
20 Footnote 170 -- actually, 168 or 169 --
21 169, there were a number of different
22 delisting notices that the company
23 received.

24 Q Right.

25 In paragraph 152 where

1 you're referencing that, that's the basis
2 for your opinion that the market was
3 expecting the delisting; correct?

4 A Well, yes. Footnote 170 is
5 the one that's right on point where the
6 company on July 29th -- that, you know,
7 they were below 15 million. And they
8 referred to it as being a bright line
9 which, you know, I'm assuming is a legal
10 term, a bright line threshold -- give me
11 a second -- and they said they were
12 expecting it as early as this week.

13 (The above-referred-to
14 document was marked as Exhibit 79 for
15 identification, as of this date.)

16 Q I'm marking as Exhibit 79 --
17 this is an earnings call transcript from
18 July 29th, 2015; correct?

19 A Correct.

20 Q If you turn to page 145 of
21 this report, that first-full paragraph --

22 A Yes.

23 Q -- it talks about "The fact
24 that they believe there are many factors
25 that should be discussed and considered

1 by the New York Stock Exchange before any
2 action is taken to delist our stock,
3 including the advanced status of our
4 capital repositioning and our plans to
5 maximize the value of and the growth in
6 our assets. In the event in our PO we
7 are ultimately unsuccessful, we expect
8 our securities will begin trading
9 over-the-counter." Do you see that?

10 A Yes.

11 Q So they were telling the
12 market that they were appealing this
13 potential delisting; correct?

14 A I think they were saying
15 that they plan to appeal it. Let me just
16 read this. Yes. They said we expect we
17 will avail ourselves of the right to appeal
18 any delisting proceeding, yes, that's
19 about what they said.

20 Q And they're saying that they
21 think they're going to be successful in
22 their appeal; correct?

23 A That's what they said, yes.

24 Q So you think investors were
25 aware of this earnings call on July 29th,

1 2015?

2 A Investors were aware that
3 their market cap had fallen below
4 15 million, that they would have been
5 aware of, even absent this earnings call.
6 If they haven't been made aware, they had
7 now been made aware. They described it
8 as a bright line rule, whatever that
9 means legally.

10 And if investors were aware
11 of the New York Stock Exchange's
12 procedures, when you hit 15 million, it
13 was that they would suspend trading as
14 they began delisting proceedings. So it
15 was not that they began proceedings and
16 then kind of let them play out and
17 suspend trading or delist at the end.
18 It's they would suspend at the time they
19 gave notice. So I mean that's something
20 investors would have been aware of
21 because they kind of are investors.

22 Q In this same earnings call,
23 the company discusses all of the things
24 they're doing to shore up their balance
25 sheet; correct?

1 A If you can point me to that.

2 Q Sure.

3 It's throughout. But I'll
4 point you to paragraph 4 on page 9.

5 A Paragraph 4, page 9.

6 Q Yes. The little number.

7 It's kind of the faded number on the
8 right.

9 A I don't see anything.

10 Q So it's talking about
11 they're prioritizing, securing,
12 refinancing and restructuring their debt.

13 And then if you go down a
14 few more paragraphs to the second from
15 the bottom, they talk about being --

16 A Hang on. So securing,
17 refinancing while we restructure our
18 existing debt through bankruptcy?

19 Q Yes.

20 A So from an equity
21 perspective, it would get all wiped out.

22 Q But they're talking about
23 trying to avoid that; correct?

24 A Sorry. Where are they
25 talking about avoiding that?

1 Q They're saying that they're
2 prioritizing, securing, refinancing while
3 at the same time, they're restructuring
4 their existing debt; right?

5 MR. BALLARD: Objection.

6 A Through bankruptcy.

7 Q Correct.

8 They're giving two things
9 that they're working on simultaneously;
10 correct?

11 MR. BALLARD: Objection.

12 A I think they're talking --
13 and maybe I'm just reading this
14 differently. I thought it's that they
15 are trying to secure refinancing to exit
16 bankruptcy. So you have a bunch of debt.
17 You need to restructure it. You also
18 need more money to be able to exit. And
19 I'm not sure how any of this helps push
20 the equity value up over 15 million.

21 Q So you read those to be
22 coextensive, not separate items?

23 A Well, even if they are
24 separate -- I read them to be coextensive
25 as you said. But even if they are

1 separate, I don't know how it helps push
2 the equity value up.

3 Q If you go further down this
4 page, the second-to-last paragraph, they
5 talk about also being discussions with
6 private infrastructure fund to make a
7 minority investment in our substantial
8 midstream assets.

9 A Yes.

10 Q You see that?

11 A Again, I'm not sure how that
12 increases equity value.

13 Q So you don't think an
14 investment in their assets would increase
15 equity?

16 A I don't see how -- typically
17 when a firm is at that point,
18 investment -- investors who come in take
19 away from equity value because they're
20 taking secured positions and assets.

21 Q If you go back to page 8,
22 the seventh-full paragraph down, so where
23 "We as a company" paragraph.

24 A Yes.

25 Q You read that sentence.

1 And it talks about the fact
2 that "We believe our immediate financial
3 problem will be solved in time and again
4 without bankruptcy." Do you see that?

5 A Yes.

6 Q Does that help clarify for
7 you that they weren't intending to file
8 for bankruptcy at this time and that they
9 thought they had sufficient financial
10 position to cover their obligations?

11 A Yes. But I don't see how
12 that would help push the value of the
13 common above 15 million which is what
14 you'd need to avoid getting delisted.

15 Q Well, they're talking about
16 being able to obtain near-term cash state
17 tax credit receipts, as well as money in
18 litigation judgments and money in ARO.
19 You see that?

20 A Right. But the expected
21 value of all of this would already be
22 reflected in the common stock. And with
23 all of these things, the common stock was
24 worth less than 15 million.

25 Q No.

1 This is saying expected, not
2 what they have currently; correct?

3 A Yes. So that's what I'm
4 saying. So if I expect to be able to get
5 100 million but with 5 percent
6 probability, then investors have already
7 impounded the expected value of
8 \$5 million. So the 100 million times the
9 5 percent into the value of the fund.

10 Q If you turn to page 12, Neal
11 Dingmann from SunTrust asks about the
12 timing of some of the financing they're
13 expecting to get.

14 And Miller's CEO responds
15 "very quickly."

16 And then further down the
17 page in the statement right before the
18 end, he talks about the fact that he's
19 disappointed that they didn't have
20 another 24 million that they were hoping
21 to get with the 9.3 million that we've
22 got today and that he's surprise -- he
23 would be surprised if they didn't get it
24 actually just later today after the call;
25 correct?

1 A Yes. He's saying that.

2 Q And he says, "At a minimum,
3 they think they'll have it by the end of
4 August"; correct?

5 A Yes. But if you recall,
6 they said they expected the delisting
7 notice this week which is way before the
8 end of August.

9 Q But that would give
10 investors some assurance that if they got
11 it, for example, later that day, that the
12 delisting wouldn't be an issue; correct?

13 A If they got it later that
14 day, yeah. So then the cause of the
15 decline would not be the delisting but
16 would actually be the fact that the money
17 didn't come in.

18 Q Are you asking me a
19 question?

20 A No. I'm just trying to
21 understand where you're going with these
22 questions. Sorry.

23 Q Let's turn to page 11 of
24 your report, pages 11 through 13. And
25 you're talking here about the index that

1 Mr. Coffman used in his event study. Are
2 you there?

3 A Yes.

4 Q You criticize Mr. Coffman
5 for either mislabeling the index he used
6 or using the wrong oil price index;
7 correct?

8 A I note that he has
9 mislabeled the index or used one that is
10 different than the one he says he used.

11 Q Did you check to see whether
12 the outcome of Mr. Coffman's test for
13 cause and effect would change if he were
14 to use one of the oil price indexes
15 versus the other?

16 A No. I did not do that.

17 Q Do you agree that both the
18 NYMEX WTI Light Sweet Crude Oil Future
19 Index and the ICEI Light Sweet Crude Oil
20 Futures Index tracked the same underlying
21 commodity?

22 A They track -- yes.

23 Q Let's turn to page 9 of your
24 report. It's 9 through 11, paragraphs 30
25 through 33. And you criticize

1 Mr. Coffman for not counting for the
2 payment of dividends and computing his
3 returns for the Series C and Series D
4 stock; correct?

5 A I note that he did not.

6 Q Did you check to see whether
7 the outcome of Mr. Coffman's test for
8 cause and effect for either of the Series
9 C or the Series D would change if one
10 were to account for the payment of
11 dividends in computing the returns?

12 A I did not do the work. I
13 have, though, pointed out that the
14 numbers in his various exhibits would be
15 affected and, you know, numbers that he
16 bases his statistical tests on would
17 be -- would change.

18 So both of these -- you
19 know, the preferred stock, dividend issue
20 and the use of an index different than
21 the stated one would affect all of the
22 numbers in his report and in those
23 various exhibits to the report.

24 Q Let's turn to page 72 of
25 your report. And this is pages 72

1 through 76, paragraphs 214 to 219.

2 Is it your opinion that two
3 days statistically significant price
4 movements following material new news is
5 inconsistent with market efficiency?

6 A Sorry. Can you restate that
7 question, please?

8 (The requested portion was
9 read back by the court reporter.)

10 A Sorry. Two --

11 Q I'll read it back.

12 Is it your opinion that
13 two-day statistically significant price
14 movements following material new news is
15 inconsistent with market efficiency?

16 A So just so I respond to the
17 right question, are you saying that
18 there's material new information on,
19 let's say, at 8 a.m. on a day and you see
20 a statistically significant return on Day
21 1 and then a statistically significant
22 return on Day 2 and would I say that's
23 indicative of market inefficiency?

24 Q Correct.

25 A No, because, you know, the

1 second day could just be by random
2 chance.

3 Q It also could be in response
4 to the new information; correct?

5 A It depends on the type of
6 information or if there are -- there is
7 some follow-on kind of information that
8 came out. Possibly.

9 Q So it's possible that you
10 could see multiple days of statistically
11 significant returns in response to new
12 material information in an efficient
13 market?

14 A Well, it depends on the type
15 of information. So, you know, sometimes,
16 information is complex. And it takes
17 investors a while to -- to evaluate it
18 and to get their heads around it and
19 determine the value implications of it.
20 So that would not imply market
21 inefficiency in and of itself.

22 Q Let's turn to this
23 August 29th, 2011 Form 10-K A filing.

24 I think you agree with me
25 that on August 29th, 2011, Miller Energy

1 filed the Form 10-K A; correct?

2 A Miller Energy filed a Form
3 10-K A on August 29, 2011.

4 Q And do you agree with me
5 that it's also the first time that KPMG
6 issued an audit report on Miller Energy's
7 financial statements?

8 A It is the first time that
9 KPMG issued -- well, it's the first time
10 there was a 10-K filed with KPMG audit
11 opinion. And it was not withdrawn.

12 Q Fair enough.

13 And there was no other kind
14 of SEC filing in which KPMG issued an
15 audit opinion on Miller Energy's
16 financial statements prior to
17 August 29th, 2011; correct?

18 A That's my understanding.

19 Q And I think you also agree
20 with me that on August 29th, 2011, the
21 price of Miller Energy's common stock
22 increased from \$2.27 to \$3.65 or
23 60.8 percent; correct?

24 A Miller Energy's stock price
25 increased, yes.

1 Q And that increase was
2 statistically significant; correct?

3 A Mr. Coffman finds that to be
4 statistically significant.

5 Q Do you disagree that it was
6 statistically significant?

7 A I have not done the work.

8 Q But despite those facts,
9 it's your opinion that KPMG's audit
10 opinion on that date did not cause the
11 price of Miller Energy's common stock to
12 increase; correct?

13 A It's my opinion that
14 Mr. Coffman hasn't shown that it was
15 KPMG's audit opinion as opposed to other
16 information that came out in the 10-K
17 that caused the price increase.

18 Q Do you have an opinion about
19 what caused the price increase on
20 August 29th, 2011?

21 A No, I do not.

22 Q Turning to your
23 paragraph 218, you talk about other
24 information that was disclosed on that
25 date that might account for the price

1 increase; correct?

2 A Correct.

3 Q And the first thing you note
4 is that the valuation of the Alaskan
5 assets have been previously disclosed on
6 July 29th and August 8th, 2011; correct?

7 A Yes. That's the first thing
8 I note.

9 Q So that information wouldn't
10 have been responsible for the price
11 increase on August 29th, 2011; correct?

12 A That information wouldn't be
13 expected to be the reason for the price
14 increase.

15 Q And then the second thing
16 you talk about here is the fact that the
17 disclosure was confounded by the
18 disclosure of the loan amendment and
19 waiver. Do you see that?

20 A Yes.

21 (The above-referred-to
22 document was marked as Exhibit 80 for
23 identification, as of this date.)

24 Q I've handed you what's been
25 marked as Exhibit 80 which is an

1 August 30th, 2011 SunTrust Robinson
2 report.

3 A Yes.

4 Q If you look in that first
5 paragraph, it talks about these credit
6 amendments that you were just discussing
7 in your report.

8 A Yes.

9 Q And then it says, "We've
10 lowered our price target to \$8 from \$8.50
11 as we factor in a higher cost of new
12 funding. We now assume both rigs started
13 drilling early November." Do you see
14 that?

15 A Yes.

16 Q So, if anything, the
17 amendments to their credit agreements
18 would have caused Miller Energy's stock
19 price to go down, not to go up; correct?

20 A Well, there are two things
21 they're talking about here. The higher
22 cost of new funding and the rigs starting
23 in early November. So it could be one or
24 the other. But, yes, it's a higher cost
25 of new funding.

1 Q That's a negative thing for
2 Miller Energy; correct?

3 A A higher cost is typically a
4 negative thing, yes.

5 Q So we wouldn't expect that
6 to cause Miller Energy's stock price to
7 go up; correct?

8 A Well, this is one analyst's
9 opinion. It would be helpful to look at
10 the full spectrum of analyst reports
11 around this event to determine what other
12 people were thinking.

13 Q Do you think ever increasing
14 the cost of new funding would cause
15 someone's stock price to go up, a
16 company's stock price to go up?

17 A Well, if the new -- if an
18 increased cost goes along with greater
19 flexibility or increased funding then,
20 yeah, the cost could be outweighed by the
21 benefits.

22 Q Do you know what the
23 amendment here that they're discussing on
24 August 29th did?

25 A I don't know precisely,

1 sitting here.

2 Q Let's go back to your
3 report.

4 A But again, it would be
5 important to look at, you know, the
6 opinions of multiple analysts.

7 Q Let's stay on this analyst
8 report.

9 In the second bullet point,
10 they talk about the fact that the "Fully
11 audited 10-K provides few surprises and
12 reassures asset value."

13 And then, it says, "KPMG
14 states in the audited filing that the
15 results of Miller's operations and cash
16 flows for the fiscal year ended 2011 were
17 in conformity with U.S. GAAP."

18 And then it talks about some
19 minor amendments. Do you see that?

20 A Yes.

21 Q In that paragraph or
22 anywhere in the report, it doesn't
23 mention the results of the investigation
24 that was into whether what happened --
25 strike that.

1 Nothing in this report
2 discusses the results of the
3 investigation as to how Miller Energy
4 came to file its earlier 10-K without
5 sign-off from KPMG; correct?

6 A Yeah. I mean one would have
7 to look at earlier reports from this
8 analyst to determine how much -- how
9 concerned they were about that issue.

10 Q And the focus of that
11 investigation was really whether and how
12 the company came to file a 10-K without
13 auditor sign-off; correct?

14 A That's my understanding,
15 correct.

16 Q Let's go back to your
17 paragraph 218. The third reason you
18 state, that this increase might not be in
19 response to KPMG's audit report, is the
20 fact that they reported that there was no
21 intentional wrongdoing in the disclosure
22 errors, limiting potential legal goal
23 liabilities. Do you see that?

24 A Yes.

25 Q Do you think that

1 information would also be relevant to the
2 importance of KPMG's signing off on
3 Miller Energy's statements in the
4 August 29th, 2011 10-K A?

5 A Sorry. Which information?

6 Q That there was no finding of
7 intentional wrongdoing.

8 A The fact that there was no
9 finding of intentional wrongdoing would
10 be relevant to KPMG?

11 Q Would be related to the fact
12 that KPMG signed off on Miller Energy's
13 financial results in the August 29th,
14 2011 10-K A.

15 MR. BALLARD: Objection to
16 form.

17 A I'm not sure I understand.

18 Q Do you think there's a
19 relationship between the fact that there
20 was a finding of no wrongdoing and the
21 fact that KPMG signed off on Miller's
22 financial results in the August 29th,
23 2011 10-K A?

24 MR. BALLARD: Objection.

25 A I don't know that there

1 would be a relationship between the
2 finding. My assumption is that there
3 would be a relationship between whether
4 it was an honest mistake or someone
5 trying to manipulate markets or put
6 information out. That -- there, the
7 relationship would be there.

8 If it was an honest mistake,
9 more likely than not, there was some kind
10 of a timing issue, someone misunderstood
11 whether the audit opinion had been
12 provided or not, while if there was ill
13 intent, then it's more likely than not
14 that KPMG wouldn't have ultimately signed
15 off an audit opinion or would have taken
16 a lot longer to sign off on an audit
17 opinion.

18 Q And I apologize if I already
19 asked that.

20 But have you analyzed
21 whether the audit opinion on August 29th,
22 2011 impacted Miller Energy's stock
23 price?

24 A I did not. I looked at what
25 Mr. Coffman said about the -- about the

1 price on August 29th. And I looked at a
2 longer window to see how the price
3 reacted over that longer window.

4 And I note in my report that
5 from July 29th, the day before the
6 erroneous filing to August 29th, the day
7 after the 10-K A filing, the stock price
8 was down, both in terms of the stock
9 price itself and if you use Mr. Coffman's
10 adjusted returns on that basis too.

11 Q Do you think it's likely
12 that KPMG's audit opinion on August 29th,
13 2011 did not cause at least part of the
14 stock price increase that day?

15 A I don't have an opinion on
16 that.

17 Q Have you analyzed whether
18 the alleged corrective disclosures in
19 this case impacted Miller Energy's stock
20 price?

21 A In what sense? Just in
22 terms of the returns on those days, the
23 statistical significance?

24 Q Either.

25 A I know that Mr. Coffman's

1 backup material has the normal returns.
2 I haven't looked at them carefully.

3 Q Do you have an opinion about
4 whether the corrective disclosures caused
5 a statistically significant price decline
6 in Miller Energy's stock?

7 A Individually? Each of the
8 whatever 17?

9 Q I'm just asking whether you
10 have an opinion, period.

11 A I know that some of them
12 didn't because I believe that some of the
13 earnings announcements are corrective
14 disclosures. And Mr. Coffman finds they
15 did not. But beyond that, I haven't
16 looked.

17 THE VIDEOGRAPHER: We're
18 going off the record at 12:02 p.m.

19 This marks the end of Media 3.

20 (A short recess was taken.)

21 THE VIDEOGRAPHER: We are
22 back on the record at 12:23 p.m.
23 This marks the beginning of Media 4.

24 MS. POSNER: Dr. Attari,
25 thank you very much. I have no

1 further questions, pending cross from
2 your counsel.

3 **EXAMINATION BY**

4 **MR. BALLARD:**

5 Q Earlier today, you recall
6 you were asked some questions about some
7 analyst reports that you were shown?

8 A Yes.

9 Q And you were asked some
10 questions in particular about information
11 in there and whether it was relevant to
12 preferred shareholders. Do you recall
13 that testimony?

14 A Yes.

15 Q Can you explain why it is
16 that you don't believe the discussions in
17 those analyst reports constitute analyst
18 reports for purposes of the Cammer factor
19 for purposes of the preferred stock?

20 MS. POSNER: Objection.

21 A So the purpose of analyst
22 reports is to collect information, to
23 analyze information and to inform
24 investors of the implications of the
25 information for the value of the

1 securities that they hold.

2 If you look at the analyst
3 reports that we were looking at earlier,
4 they contain that type of analysis and
5 opinions for the common stock. But they
6 do not contain similar analyses or
7 opinions for the preferred stock.

8 So, for example, the analyst
9 reports do not say we think that the
10 Series C preferred stock, we have a price
11 target of, say, \$27 for the Series C
12 preferred stock or we advise investors to
13 sell the Series C preferred stock that
14 they hold and so on.

15 So for this reason, those
16 reports cannot be considered analyst
17 reports for the preferred stock. What
18 the analyst reports do contain is
19 information on how much of the preferred
20 securities is outstanding, what the
21 dividend payments on those will be and
22 such. But that's largely in the context
23 of trying to value and analyze the common
24 stock.

25 So the cash that's left over

1 for common stockholders is -- depends on
2 the amount that's -- interest payments to
3 debt holders, preferred dividends to the
4 owners of preferred securities. So after
5 all of those deductions. So a lot of the
6 references to the preferred securities
7 was in relation to that.

8 There were also references
9 about -- to preferred securities in terms
10 of, you know, the company at issue had
11 preferred securities and had raised
12 moneys from those preferred securities.
13 But that's just reiterating information
14 that's already out in the market.

15 Q I would like to also revisit
16 a topic that came up more recently in
17 your testimony today.

18 If you turn to pages 75 and
19 76 of your report, you refer to a loan
20 agreement and the waiver of certain
21 events of defaults on these pages.

22 Do you recall you were asked
23 some questions about that earlier today?

24 A Yes.

25 Q What was the significance of

1 the loan agreement revisions and the
2 waiver of events of defaults to investors
3 in Miller Energy securities?

4 A So the waiver of events of
5 defaults basically means that the company
6 can continue in operation which from a
7 common stockholder's perspective is
8 positive information because otherwise,
9 the company is in default and, you know,
10 will be liquidated or go through a
11 bankruptcy proceeding, a reorganization
12 and a bankruptcy proceeding which
13 typically causes a loss in value for
14 common stockholders. So it's positive
15 news for common stockholders.

16 Q Does Exhibit 58, your expert
17 report, still contain a complete and
18 accurate statement of your opinions as
19 you hold them right now?

20 A Yes.

21 Q Have you changed your
22 opinions in any way over the course of
23 the questions and answers today?

24 A No.

25 MR. BALLARD: I have no

1 further questions.

2 FURTHER EXAMINATION BY

3 MS. POSNER:

4 Q I believe you already
5 testified to this earlier today.

6 But you have no academic
7 research supporting your position that in
8 order for an analyst report to be
9 relevant for Cammer Factor 2, it must
10 have a price target and a buy, hold or
11 sell recommendation on it; correct?

12 A Yes, correct.

13 Q You'll also agree with me
14 that the analyst reports that we looked
15 at earlier today not only discuss the
16 things you just responded to with
17 Mr. Ballard but also discussed things
18 such as the company's liquidity; correct?

19 A Yes.

20 Q They also discuss the
21 company's debt; correct?

22 A Yes.

23 Q They also discuss the
24 ability of the company to pay its
25 dividends to preferred shareholders;

1 correct?

2 A Yes.

3 Q And then moving to the
4 second topic Mr. Ballard asked you about
5 with regard to the August 29th waiver, as
6 of August 29th, 2011, was there a threat
7 that the company could not continue in
8 operations at that time, absent this
9 waiver?

10 A I assume that there must
11 have been an event of default because
12 otherwise, you would not need a waiver of
13 an event of default.

14 MS. POSNER: Can you read
15 back the question?

16 (The requested portion was
17 read back by the court reporter.)

18 A And if there was a default,
19 then that would threaten the continued
20 operations of the company.

21 Q Was there a concern that
22 they would not get that waiver at that
23 time?

24 A I have not studied the
25 issue.

1 MS. POSNER: I have no
2 further questions.

3 THE VIDEOGRAPHER: This
4 concludes today's testimony of
5 Mukarram Attari. We're going off the
6 record at 12:30 p.m. This also
7 concludes Media 4.

8

9 (Time noted: 12:30 p.m.)

10

11

12 DR. MUKARRAM ATTARI

13

14 Subscribed and sworn to before me
15 this _____ day of _____, 20 _____.
16

17

18 NOTARY PUBLIC

19

20

21

22

23

24

25

1

2 I N D E X

3

4 E X A M I N A T I O N

5

6 EXAMINATION FURTHER EXAMINATION

7

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1 C E R T I F I C A T I O N
2
3

4 I, ANTHONY GIARRO, a Shorthand
5 Reporter and a Notary Public, do hereby
6 certify that the foregoing witness, DR.
7 MUKARRAM ATTARI, was duly sworn on the date
8 indicated, and that the foregoing, to the
9 best of my ability, is a true and accurate
10 transcription of my stenographic notes.

11 I further certify that I am not
12 employed by nor related to any party to
13 this action.

14
15 
16

17 -----
18 ANTHONY GIARRO
19
20
21
22
23
24
25

1 **ERRATA SHEET**

2 **VERITEXT LEGAL SOLUTIONS**

3 **330 OLD COUNTRY ROAD**

4 **MINEOLA, NY 11501**

5 **800.727.6396**

6 **CASE: COSBY, et al. vs. KPMG, LLP**

7 **DEPOSITION DATE: 6/4/2019**

8 **DEPONENT: DR. MUKARRAM ATTARI**

9 **PAGE LINE(S) CHANGE REASON**

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19	_____	_____	_____

20

DR. MUKARRAM ATTARI

21 **SUBSCRIBED AND SWORN TO BEFORE ME**

22 **THIS _____ DAY OF _____, 20 ____.**

23

(NOTARY PUBLIC)

24

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

- (1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:
- (A) to review the transcript or recording; and
- (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

- (2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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